

Chesapeake Bay Preservation Act Work Program
Stakeholder/Planning Commission Public Hearing Comment Matrix
February 25, 2010

No.	ISSUE DESCRIPTION	Comment Raised By	STAFF COMMENTS & RECOMMENDATION	PLANNING COMMISSION COMMENTS
A.	OVERARCHING ISSUES			
1)	<p>Provide for the Board of Supervisors to be the Exception Review Committee for exceptions processed concurrent with legislative applications to reduce costs and delays to business (similar to Fairfax County).</p> <p>Add new Section 1222.23.f to read:</p> <p><u>Exceptions to the criteria and requirements of this Chapter to permit encroachment into the RPA that do not qualify for administrative review may be granted by the Chesapeake Bay Review Board or by the Board of Supervisors in conjunction with a rezoning or special exception approval as set forth in this Article with appropriate conditions necessary to preserve the purposes and intent of this Ordinance.</u></p>	Urban & Environmental Stakeholders, Mike Rolband, NVBIA/NAIOP	The enabling regulations (9VAC10-20-150.C.2.a) allow exceptions to be considered and acted upon by the local legislative body; the local planning commission; or a special committee, board or commission established or designated by the local government. The draft amendments create a Chesapeake Bay Review Board with expertise pertinent to agriculture, land development, and the environment that will review exceptions either prior to, concurrent with, or following review of legislative applications (similar to Prince William County). The current approach permits the review board to provide comprehensive, consistent review of all exception applications. Staff seeks additional direction from the Planning Commission regarding the desired approach.	<p>Planning Commission supports amendment similar to Fairfax County's ordinance allowing exceptions associated with legislative applications to be processed by the Board of Supervisors, but would like additional information regarding application of this provision: 1) Does an applicant have to chose one approach or the other? 2) If not, is there the potential for conflicts?</p> <p>Staff researched the Fairfax County exception process. Due to the complexity inherent to the either/or approach, staff recommends that Section 1222.23(a) be amended as follows:</p> <p><u>... may be granted through an exception issued by the Chesapeake Bay Review Board. Exceptions associated with rezoning or special exception applications shall be processed in conjunction with the subject application and may be granted by Board of Supervisors.</u></p>
2)	<p>Landscape Architects and other registered professionals should be allowed to submit required plans and surveys currently designated under the purview of Certified Arborists and Professional Foresters. Arborist and foresters cannot be held professionally responsible for their work as they are not certified.</p> <p>Can the list of acceptable professionals authorized to prepare planting plans be expanded?</p> <p>The affected sections are as follows: Sections 1222.14.d.i & ii, Section 1222.14.e.i, 1222.23.b.vii., FSM 7.304, FSM 7.501.A.2.b, and FSM 8.305.E.1.j</p>	Urban Stakeholders, Mark Trostle, George Rhodes, Klancher	<p>Planting Plans are required to be prepared under the direction of and signed by a certified arborist or professional forester who has at least a Bachelor of Science degree from an accredited School of Forestry due to the scope of work required to be performed. Professional Foresters are considered the most qualified individuals to prepare the required plans. Certified Arborists obtain certification through an exam administered by the International Society of Arboriculture (ISA) and have to maintain certification through continuing education and are also considered qualified to prepare the required plans. Professionals such as those specified who have acquired the skills necessary to prepare the required plans have the option to become Certified Arborists in order to submit the required plans.</p> <p>The regulations do not specify who may prepare the plans; the decision is left to the discretion of the locality.</p>	<p>Planning Commission voted 7-1-1 to amend this section the draft amendments to include Landscape Architects and other registered design professionals.</p> <p>Planning Commission voted 8-0-1 to draft a letter to the Board regarding the potential need to increase fees to cover the cost of additional staff review.</p>

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3)	Amend references to “a plan prepared under the direction of an ISA Certified Arborist or Professional Forester” in Section 1222.14 and elsewhere in Chapter 1222 and FSM Chapters 7 & 8 to read “a plan prepared by a Certified Arborist, Professional Forester, Landscape Architect, or other qualified professionals all of whom must be experienced and professionally qualified in riparian plantings.”	NVBIA/NAIOP	<p>Staff recommends the following options in order of preference:</p> <ol style="list-style-type: none"> 1) Maintain the existing text. 2) Amend the existing text to read “a plan prepared by an Urban Forester, Certified Arborist, or Landscape Architect,” consistent with the current criteria outlined in FSM 7.302 for preparation of tree conservation plans. 3) Amend the text as suggested with the following revision per previous discussion: “a plan prepared by a Certified Arborist, Professional Forester, Landscape Architect, or other qualified design professionals, all of whom must be experienced and professionally qualified in riparian plantings.” <p>Staff seeks additional direction from the Planning Commission regarding the requirement in FSM 7.501.A.2.b for a Tree Cover Inventory to be prepared under the direction of and signed by an ISA Certified Arborist or a Professional Forester. Discussion to date has focused on planting plan requirements.</p>	
4)	<p>Is the current percentage of land affected derived only from the perennial stream buffer? The map does not include connected wetlands, which are included in the ordinance. The map must be modified to include these areas and estimates of affected land area must be updated. In addition, there are some stormwater management ponds within the Broad Run District that are not currently reflected on the map, but would be subject to the Ordinance.</p> <p>Consider adding perennial stream segments based upon connections with perennial streams along the Fairfax County line.</p>	Sally Hankins, Mike Rolband, Lou Canonico, Jeff Nein, Rick Stout, NVBIA/NAIOP, Klancher, Ruedisueli, Austin, Maio, Syska	<p>The current percentage of land affected is currently derived solely from the perennial stream buffer. Staff is exploring options to modify the map to include approximated areas of connected wetlands based upon the National Wetlands Inventory (NWI) and the Loudoun County Wetlands Model for discussion at the work session.</p> <p>Chesapeake Bay Preservation Area (CBPA) maps are intended for use as a planning tool, not as a detailed site-specific RPA boundary map for site planning purposes. Due to the limitations inherent to mapping the RPA, the regulations require a site-specific delineation of the RPA at the time of development. As a result, some additional areas of RPA are likely to be identified.</p> <p>Staff supports amending the map to include additional perennial streams based upon connections to field-verified perennial streams along the Fairfax County line.</p> <p>Staff is also evaluating the perenniality results from the Countywide Stream Assessment to potentially incorporate additional perennial stream segments into the CBPA map.</p>	
5)	Is it mandatory to include connected wetlands in the RPA?	Maio	The enabling regulations require that wetlands connected by surface flow and contiguous to water bodies with perennial flow be included in the RPA.	

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6)	Recommend that the perennial flow designation be based on a pre-determined drainage area rather than a site-specific perennial flow determination. Consider basing perenniality on a drainage area of 100 acres, similar to Minor Floodplain.	Linda Erbs, NVBIA/NAIOP	The CBPA regulations (9VAC10-20-80) require that a site-specific determination of perenniality be made or confirmed by the local government as part of the plan of development review process (9VAC10-20-105). Guidance available from the Department of Conservation and Recreation (DCR) indicates that drainage area is an acceptable method for generally mapping the extent of RPA streams, but that it does not definitively determine the precise beginning of perennial flow. Given the wide variability of drainage areas that constitute perenniality, it would be difficult to isolate a given drainage area that would reliably capture all perennial streams without including intermittent stream segments or excluding perennial stream segments. This is further supported by the conclusion of the recently completed Countywide Stream Assessment that there did not appear to be any general watershed trends or land cover trends related to points of perenniality based upon the 155 perenniality sampling points.	
7)	Is the entire County required to be designated as the RMA, or can the RMA be limited to specific areas? What is the justification for the RMA designation?	Christine Windle, Klancher, Syska	The CBPA regulations outline specific areas that localities must designate as RMA (floodplains, highly erodible soils including steep slopes, highly permeable soils, nontidal wetlands not included in the RPA and any other lands considered by the local government to be necessary to protect the quality of state waters). Given the prevalence of these features, the desire to provide maximum water quality protection, and the difficulty of administering a feature-based RMA, staff recommended the designation of a Countywide RMA similar to Prince William and Fairfax Counties. A Countywide RMA also best addresses the issue of nonpoint source pollution, one of the most significant threats to water quality. The Board of Supervisors supported this recommendation during the approval of the Chesapeake Bay Preservation Act Work Program.	
8)	Consider the designation of the Route 28 Tax District as an Intensely Developed Area (IDA) to minimize the impact of the regulations by allowing administrative reductions in the buffer. Provide information about the requirements for the designation of IDAs and clarify whether or not any IDAs are currently proposed. What is the protocol for establishing an IDA? Did staff evaluate the need for an IDA in conjunction with adoption of the Bay Act or evaluate its effects on the Route 28 Tax	Urban Stakeholders, Joe Paciulli, Mark Hassinger, NVBIA/NAIOP, Klancher, Syska	The CBPA regulations (9VAC10-20-100) allow local governments to designate IDAs, which are areas of existing development and infill sites where little of the natural environment remains and redevelopment is planned. These are areas where development has severely altered the natural state of the area such that at least one of the following conditions exist at the time of adoption: 1) there is more than 50 percent impervious surface; 2) public sewer and water systems or a constructed stormwater drainage, or both have been constructed (not planned) as of the local adoption date; and 3) housing density is equal to or greater than four dwelling units per acre. Significant areas of natural environment remain within the Route 28 Tax District, which is only 31 percent impervious based upon current Geographic Information System data. Based on the current mapping of the Resource Protection Area (RPA), approximately 8 percent of	Deferred discussion to the 2/25/10 work session.

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	District?		<p>parcels within the Route 28 Tax District contain RPA, which is lower than the percent of parcels countywide (which is approximately 10 percent). Furthermore, approximately 58 percent of the RPA within the Route 28 Tax District falls within the Major Floodplain, where development is already limited by the Zoning Ordinance regulations of the Floodplain Overlay District.</p> <p>The stormwater system management performance criterion that would apply in IDAs would, in some cases, be more stringent than the requirement that would apply absent the IDA designation. On vacant or minimally-developed parcels in IDAs the requirement may be difficult, if not impossible, to achieve. Additionally, there are opportunities for case-by-case consideration of encroachments into the RPA through the exception review process. In 2003 Fairfax County considered the application of IDAs in their Chesapeake Bay Preservation Ordinance for the Tyson's Corner Urban Center and other portions of the County, including highly developed portions of the Route 28 corridor, based largely on a request by the WEST*GROUP, the developer of Tyson's. Following a study of the ramifications of an IDA designation, the WEST*GROUP withdrew their request. Fairfax County does not currently have any IDAs and none are being sought. Current densities in the Fairfax portion of the Route 28 Tax District are approximately 0.50 FAR while the Loudoun portion averages approximately 0.24 FAR for developed parcels.</p> <p>Staff evaluated the potential application of IDAs and recommends that no IDAs be established. Furthermore, the Rt. 28 Tax District does not meet the IDA designation criteria.</p>	
9)	Property owners within the Route 28 Tax District should be fully informed of the proposed amendments due to the perception that the District is "protected from change" and will not be affected by the proposed amendments.	Urban Stakeholders	Staff will provide updates to the Route 28 Tax District property owners throughout the regulatory process via e-mail updates associated with the Route 28 CPAM. Related information is also available via the Chesapeake Bay Webpage (www.loudoun.gov/chesapeakebay), and a Chesapeake Bay Hotline and a Chesapeake Bay e-mail address have been established. In addition, it is anticipated that stakeholders such as the National Association of Industrial and Office Properties and the Economic Development Commission will keep their members informed.	

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10)	<p>Delete Section 1222.20.c prohibiting detached accessory structures from being located in the RPA.</p> <p>Delete the following Sections, which create an unnecessary burden on existing homeowners:</p> <p>1222.20.a. i.b; 1222.20.a. i.c; 1222.20.a.iii; 1222.20.c; 1222.20.d;</p> <p>and</p> <p>In 1222.20.b, remove the phrase, “that are attached to the principal structure” and add “including gazebos, sheds, parking areas, pools, patios, retaining walls, and terraces.”</p>	Environmental Stakeholders, NVBIA/NAIOP	The suggested amendments are not consistent with the enabling regulations (9VAC10-20-130.6, 9VAC10-20-150.A.1 and 9VAC10-20-150.C.4) and DCR guidance (Nonconforming Structures and Uses, September 16, 2002), which clarifies the requirement to submit a WQIA in conjunction with a waiver request, outlines recommended limits on the extent of encroachments permitted by administrative waiver, confirms the required findings, and clarifies that accessory structures and uses are not permitted in the RPA by administrative waiver. The construction and expansion of detached accessory structures are required to be reviewed as formal exceptions.	
11)	<p>Fairfax County permits sheds less than 150 square feet to be constructed on existing lawns in the RPA.</p> <p>Provide more flexibility for homeowners building sheds in the RPA.</p> <p>Can accessory structures under a certain size (e.g., 150 sf as applied in the LOD) be exempted from the ordinance or is inclusion required?</p>	Environmental Stakeholders Mike Rolband, Klancher	Sheds are not listed as an exempt use or a permitted use in the RPA in the Fairfax County Chesapeake Bay Ordinance. A brochure entitled “Understanding the Chesapeake Bay Preservation Ordinance Amendments, Important information for Fairfax County homeowners” published in June 2005 states that: “The administrative waiver for minor additions is not available for construction of detached accessory structures such as sheds. Accessory structures are specifically prohibited in the state regulations from consideration as minor additions. However, the construction of small sheds that do not require a building permit (the current limit under the Virginia Uniform Statewide Building Code is 150 sq.ft. of building area) constructed over existing maintained grass lawns can be considered to be an inconsequential modification to an existing use and may be permitted. As a general rule, sheds should only be located in RPAs when there are no reasonable alternatives for locating the shed outside of the RPA.” Notably, the brochure clarifies that the state regulations prohibit the construction of sheds in the RPA. Furthermore, Fairfax County does not have a mechanism to review projects that do not require a Building Permit (e.g., projects less than 150 square feet); therefore, sheds are often constructed without local review. By contrast, Loudoun County requires a Zoning Permit for all proposed projects, which is reviewed for consistency with all locally adopted ordinances.	

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12)	Can the Board grandfather sheds in the RPA through grandfathering applicable to houses built prior to adoption of the regulations?	Robinson	Staff is consulting with the County Attorney regarding the ability to grandfather new accessory structures on existing lots.	
13)	Additions to commercial structures within the Resource Protection Area (RPA) should be addressed in the proposed amendments.	Urban Stakeholders	Section 1222.19 and Section 1222.20 of the CBPO addresses administrative waivers for loss of a buildable area and administrative waivers for minor additions, which would apply to commercial structures.	Deferred discussion to the 2/25/10 work session.
14)	Eliminate Section 1222.19.c. When a commercial lot loses buildable area as a result of the RPA, then the required parking for the commercial use should also be subject to the waiver.	NVBIA/NAIOP	The suggested amendment is not consistent with the enabling regulations (9VAC10-20-130.4), which specify that the encroachment shall be the minimum necessary to achieve a reasonable buildable area for a principal structure and necessary utilities. In addition, DCR guidance (Resource Protection Area: Buffer Area Encroachments, September 16, 2002, Revised June 15, 2009) clarifies that accessory structures and uses are not permitted in the RPA by administrative waiver.	
15)	The Revised General Plan policy allowing lakes and ponds to be located in the RPA and/or floodplain is not addressed in the Zoning Ordinance. The Board directed staff to include draft language allowing stormwater management facilities within the major floodplain as part of the approved Work Program; however, the change is not included in the draft amendments. We recommend that the Zoning Ordinance floodplain overlay district be revised to allow stormwater management facilities. This would result in needing to strike 1222.12.a.i. Clarify the issue of stormwater management ponds in the floodplain at One Loudoun that was mentioned during the public hearing.	Urban Stakeholders, Bill May, NVBIA/NAIOP, Klancher	While the Revised General Plan (RGP) supports density credit in the RPA, Resource Management Area (RMA), and the floodplain, it does not support the location of lakes and ponds in the floodplain. Draft RGP policies state that “uses within river and stream corridors will be governed by the County-adopted provisions of the Chesapeake Bay Preservation Act; a Floodplain Overlay District; a Scenic Creek Valley Buffer; Steep Slopes Performance Standards; and federal and state regulations to the Clean Water Act.” While flood control or stormwater management facilities that drain or treat water from multiple development projects or from a significant portion of a watershed are permitted within the RPA by the CBPO; these facilities are not permitted within Major Floodplain as outlined in the Floodplain Overlay District (FOD). Staff does not support amending the FOD to allow stormwater management facilities to be located within the Major Floodplain due to the potential for structural instability, increased flooding, and the concentration of pollutants within the river and stream corridor. Loudoun County’s floodplain management program is currently in good standing with the Federal Emergency Management Association (FEMA), which enables local property owners to obtain low-cost flood insurance. Any proposed amendments that may affect the status of the County’s local floodplain management program would require significant study and coordination outside the scope of the Work Program.	Deferred discussion to the 2/25/10 work session.
16)	Provide grandfathering provisions to guide staff on what applications are exempt if diligently pursued to an approval. Otherwise, property owners must hire attorneys to assert their vested rights and seek confirmation from the County Attorney or circuit court to complete their projects.	Urban Stakeholders, Sally Hankins, Mark Hassinger, John Mossgrrove,	“Vesting” is a determination to be made by the Administrator on a case-by-case basis. Virginia Code Section 15.2-2261.E requires that individual lots on record plats or parcels of land subject to final site plans comply, to the greatest extent possible, with the provisions of any local ordinance adopted pursuant to the Chesapeake Bay Preservation Act. The “vesting” analysis will require that,	

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	<p>Staff should consider Fairfax County’s grandfathering policy, which has been the easiest to implement for staff and landowners. The proposed grandfathering policy should be the subject of a stakeholders meeting.</p> <p>Will the regulations apply to approved Concept Development Plans? How does the 10-year vesting window apply? Is vesting State mandated? At what point will proposed grandfathering be outlined? Specify in the grandfathering provisions that staff requested changes to existing land development approvals will not result in the need for amended concept development plans. What have other jurisdictions done about grandfathering?</p>	NVBIA/NAIOP, Klancher, Robinson, Maio, Syska	<p>even though “vested,” encroachments into the RPA Buffer shall be the minimum necessary to achieve reasonable buildable area. Applicants who disagree with the vesting determination may appeal. “Grandfathering” applies to active applications and is solely at the discretion of the Board of Supervisors. The Board may want to consider importing the “vesting” standards of the Code of Virginia for zoning actions as a basis for determining what should or should not be grandfathered.</p> <p>Staff has obtained copies of grandfathering policies from Fairfax County and Prince William County and is working with the County Attorney’s office to develop options for Planning Commission consideration. Staff can specify in the grandfathering provisions that existing approved CDPs will not have to be amended to accommodate staff requested changes.</p>	
B.	AGRICULTURE			
17)	Concern regarding the agricultural staffing resources needed to implement the Chesapeake Bay Preservation Act (CBPA), including staff at the Loudoun Soil and Water Conservation District and Extension.	Agriculture Stakeholders	Staff recognizes that current staffing levels in key Departments would have to be maintained, including the Soil and Water Conservation District, and Extension. Staff will advise the Board during the upcoming FY 2011 budget deliberations to address how any proposed cuts to Staff levels in affected departments (including, but not limited to, Building and Development, Planning, and Extension Services), as well as the Soil and Water Conservation District (SWCD), would impact the implementation and administration of the proposed Chesapeake Bay Preservation Ordinance (CBPO).	Planning Commission accepted staff’s recommendation.
18)	<p>Concern regarding the effects of fencing livestock on access to water and shade.</p> <p>Concern regarding the effect of the 100-foot RPA buffer.</p>	Agriculture Stakeholders, Tyler Wegmeyer, William Cockrell	Grazing and access to water is permitted within the buffer as long as the Buffer Area is managed to prevent concentrated flows of surface water from breaching the Buffer Area. Where fencing is required, alternative watering systems and additional sources of shade may need to be accommodated. Fencing and alternative watering systems are among the Best Management Practices (BMPs) that are eligible for funding under the Virginia Agricultural BMP Cost-Share program, which covers up to 75% of the cost of the BMP. The SWCD paid \$250,000 in cost-share to landowners to assist in the implementation of BMPs for the current fiscal year.	Planning Commission accepted staff’s recommendation.
19)	Request to amend the composition of the Chesapeake Bay Review Board to include a member with an agricultural background.	Agriculture Stakeholders	Staff amended the text in Section 1222.22.b of the CBPO to read: “The members shall represent diverse professions related to agriculture, land development, and the environment.”	Planning Commission accepted staff’s recommendation.
20)	Concern regarding the effect of reducing the erosion and sediment control threshold from 10,000 square feet (sf) to 2,500 sf on agricultural structures.	Agriculture Stakeholders	Staff acknowledges this concern; however, the Virginia Erosion and Sediment Control Regulations and the Chesapeake Bay Preservation Area Designation and Management Regulations do not provide an erosion and sediment control	Planning Commission accepted staff’s recommendation.

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			exemption for agricultural structures.	
21)	<p>Recommend that the current 10,000 sf threshold remain in place. Or, evaluate the process and fees associated with the 2,500 sf threshold, which is better environmentally.</p> <p>Concern with unintended consequences of the 2,500 sf land disturbing activity requirement applicable to septic system construction on septic system repair and remediation projects.</p>	<p>Al Van Huyk, Tyler Wegmeyer, William Cockrell, Patrick Ryan, Bill Baker, Luke Wiseman</p>	<p>Maintaining the current disturbance threshold is not an option under the CBA regulations. However, the Board of Supervisors could choose to not implement this particular performance criteria.</p> <p>Staff is evaluating the process and fees associated with the reduced erosion and sediment control threshold and will be prepared to brief the Commission at the next work session.</p> <p>The reduced 2,500 sf threshold would apply to septic system maintenance and repair projects. Currently, the 10,000 sf threshold only applies to septic systems included in an overall plan for land-disturbing activity related to construction of the building to be served by the septic system.</p> <p>Bill Baker e-mailed a cost analysis to the Planning Commission regarding estimated costs for a hypothetical project. Staff is prepared to discuss the spreadsheet with the Commission at the next work session.</p>	
22)	<p>Request to re-focus this effort for more public hearings and re-drafting of policies to ensure that Loudoun County receives equitable and achievable goals as the State and the Environmental Protection Agency (EPA) formulates State Watershed Plans required by the Chesapeake Bay Total Maximum Daily Load (TMDL).</p>	<p>Agriculture Stakeholders</p>	<p>EPA is currently working with the Bay states on the development of a TMDL for the Chesapeake Bay by December 2010. The TMDL is a regulatory tool of the Clean Water Act (Section 303d) and can be considered a “pollution diet” that will allocate loadings of nutrients (nitrogen and phosphorus) and sediment to all jurisdictions in the Bay watershed, including New York, Pennsylvania, West Virginia, Delaware, Maryland, Virginia, and the District of Columbia. The work program initiated by the Board of Supervisors on April 7, 2009 and the Intent to Amend approved by the Board on December 15, 2009 directs the implementation of portions of the Chesapeake Bay Preservation Area Designation and Management Regulations, and other criteria, promulgated pursuant to the Chesapeake Bay Preservation Act for the protection of local water quality. However, implementation of the regulations will aid in achieving the nutrient and sediment load reductions required by the TMDL.</p>	<p>Planning Commission accepted staff’s recommendation.</p>
23)	<p>Recommendation that a public education effort be developed to provide information on all of the land conservation programs available from the State, SWCD, and Extension.</p>	<p>Agriculture Stakeholders</p>	<p>Staff supports distribution of information on related conservation programs that will support implementation of the regulations via information brochures, fact sheets, and the County website and looks forward to working collaboratively with the agricultural stakeholders and their staff liaisons in the development of these materials.</p>	<p>Planning Commission accepted staff’s recommendation.</p>
24)	<p>The Agricultural and Forestry District Advisory Committee (ADAC) would like to work cooperatively with staff to</p>	<p>Agriculture Stakeholders</p>	<p>Staff appreciates the support and assistance of ADAC in implementing the proposed regulations.</p>	<p>Planning Commission accepted staff’s recommendation.</p>

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	revise the Land Management Plan required to enroll in an Agricultural District to ensure compliance with the regulations as a prerequisite for acceptance.			
25)	<p>Is there a requirement to fence livestock out of streams or does this occur under certain circumstances?</p> <p>What restrictions are there currently on recreational horse activities and other recreational agricultural activities? How will they be affected by the ordinance?</p>	Austin (12/3) Syska	<p>Fencing and/or other grazing Best Management Practices are only required if adequate vegetation cannot be maintained within the RPA Buffer Area. If fencing is required, the fence must be placed 25-feet from the stream.</p> <p>There are currently no mandatory BMP requirements for agricultural activities. The ordinance introduces BMP requirements for agricultural activities that encroach into the 100-foot Buffer Area, which are determined on a case-by-case basis in a collaborative effort between the landowner and the SWCD. Non-breeding horse operations are not eligible for cost-share assistance, but may obtain a 25% tax credit for BMP installation.</p>	
26)	Is it accurate that the fencing would only apply to perennial water bodies?	Austin (12/3)	Fencing would only apply adjacent to perennial water bodies.	
27)	<p>Request for a Fiscal Impact Analysis for agriculture to assess costs associated with implementation of the proposed regulations.</p> <p>Concern of costs of proposed regulations on equine owners. Concern with the ability to maintain two-inches of vegetative cover when grazing horses.</p> <p>How much grazing and cropland will be lost if the draft amendments are adopted? How does this translate into dollars?</p>	Robinson (12/3) Edna Cross, John McClintic, Syska	<p>Staff notes that agricultural activities are permitted within the RPA Buffer Area as outlined in the CBPO. The cost to conduct these activities is related to the cost of the BMP required to offset the reduced width of the buffer and varies according to the BMP selected and whether or not the BMP is already being implemented. It is also acknowledged that there will be additional cost associated with the reduction of the erosion and sediment control threshold, and the need to obtain grading permits for the construction of agricultural structures. While a formal cost-benefit analysis is not included in the current scope of the project, the agricultural stakeholders and their staff liaisons met on January 25, 2010 to examine the potential impacts and to develop an estimate of fiscal impacts to agriculture. The following items were discussed during the meeting:</p> <ul style="list-style-type: none"> ▪ The difficulty in determining how many parcels within AR-1 and AR-2 are actually farmed. ▪ There are an estimated 1,400 farms in the County and 15,000-20,000 horse owners. ▪ Approximately 65 percent of agricultural land is leased and it may be difficult for tenants to convince landowners to install BMPs. ▪ 100 percent of farming operations would be impacted by regulations affecting the RMA (due to the fact that the RMA is Countywide). ▪ Approximately 15 percent of farming operations would be impacted by regulations affecting the RPA. Most crop farmers are not cropping within the buffer; the requirements would mostly affect grazing land. ▪ 75% cost-share is available based on a maximum price for fencing of \$4.44 	

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			<p>per linear foot (based upon estimates for woven wire fence received the previous year; board fencing ranges from \$5.25 - \$7.00 per linear foot); 75% cost-share is available at \$3,600 per installed watering trough (average one per 10 acres) and \$3.00 per linear foot of installed pipeline. Cost-share for cover crop planting (e.g., winter cover crops for row crop fields) ranges from \$25-\$60 per acre. Cost-share is also available for converting crop fields to grassland.</p> <ul style="list-style-type: none"> ▪ Cost-share funds are currently available and funding has also been proposed for the next fiscal year. ▪ Non-breeding horse operations are not eligible for cost-share, but may apply for a 25% tax credit based on the total cost of BMP installation. ▪ There is a concern regarding the potential for a reduction in the number of livestock and associated economic impacts. The estimated economic impact per horse is \$3,600. ▪ There is a concern regarding 2,500 square foot threshold for erosion and sediment control (reduced from 10,000 square feet) and the associated increase to the cost of a barn (participants estimated an additional cost of \$10,000 - \$20,000 for a barn). Multiple outbuildings are commonly associated with farming operations. ▪ There are concerns regarding septic pump-out requirements due to reduced need to pump-out systems not being used at full capacity. ▪ There was an observation that requirements on homeowners/developers may benefit farming operations. ▪ Participants recommended that a more direct link be provided on the website to the agricultural requirements of the Chesapeake Bay Preservation Ordinance; that an Agricultural Matrix with scenarios and related requirements and/or FAQ regarding proposed regulations be developed; and that the Agricultural Matrix or FAQ be provided to Farm Bureau for distribution to approximately 500 producers on the mailing list. ▪ Participants also recommended that the website be updated to clarify the difference between the proposed regulations and the Chesapeake Bay TMDL. 	
28)	Jim Cross presented the following cost figures associated with operating his farm as a result of the draft amendments. 300-acre farm with 1 mile of stream (5,280 linear feet). 10, 560 linear feet of fence (5,280 lf x 2) @ \$3.50 a foot = \$36, 900. Clearing and grading to install fence = \$30,000.00.	Jim Cross Syska	<ul style="list-style-type: none"> ▪ 75% cost share is available for the cost to install the fence = (\$36,900-\$27,675 = \$9,225) ▪ Grading permit, site plan, E&S plan, Bond, Certified Land Disturber is not required to install fence = (-\$15,000.00). ▪ Clearing and grading is not always required to install fence and clearing 	

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	<p>Grading permit, site plan, E&S plan, Bond to put in fence = \$15,000.00. Certified Land Disturber = \$2,500 Four Water Gates = \$10,000. Total cost over \$94,000. Concern that his farm cannot meet two-inch cover requirement in the buffer due to deer browse during the recent snowstorm. Annual maintenance cost of taking trees down that fell across fence = \$5,000.00. Cost to install 4 agricultural buildings (1 cattle barn, 1 hay barn, and 1 equipment building, 1 maintenance building) that have been installed in 20 years of farming would = \$70,000.00 (\$12,500 x 4). Could not do today what he has done in the past and come to the County because the costs would be \$164,000.</p> <p>Please evaluate and validate the figures provided by Jim Cross evaluating how much the ordinance would cost to implement on his property, including all items listed and associated maintenance costs.</p>		<p>could be done with existing farm equipment where necessary, as opposed to hiring a contractor; potential reduction in cost = (\$30,000-\$15,000=\$15,000)</p> <ul style="list-style-type: none"> ▪ Construction of 4 livestock crossings = \$10,000 ▪ Total Cost = \$34,225, as compared to \$94,000. ▪ Section 1222.15.b & c. of the CBPO provide a period of 18 months to establish compliance with the cover requirements; therefore, temporary disturbances will not result in the need for a response. ▪ Staff acknowledges costs associated with annual fence maintenance. ▪ The average cost for a grading permit, E&S plan, Bond, Certified Land Disturber for the referenced buildings would be approximately \$4,000 for a total cost for 4 buildings of \$16,000 distributed over a 20 years; additional savings would be possible by including all 4 projects in one grading permit (\$4,000). A more detailed analysis has been developed in response to Bill Baker's project spreadsheet. ▪ Total Cost = \$50,225. 	
29)	Concern that you cannot farm in sandy loam soil along creek which is conducive to growing certain crops (e.g., carrots).	Luke Wiseman	Crops may be planted within the landward 75 feet of the buffer with the application of required BMPs as outlined in Section 1222.15 of the CBPO. The seaward 25-feet of the buffer is required to be maintained in a natural state in order to retard runoff, prevent erosion, and filter nonpoint source pollution.	
30)	What has the impact of this ordinance been on farming now that it has been in effect for 20 years in the other required jurisdictions?	Klancher	There has only been one minor change to the agricultural requirements of the regulations in the past 20 years (conservation assessments in lieu of conservation plans), which would indicate that the program has been implemented successfully in the other jurisdictions, without threatening the viability of farming. Staff conferred with several local Soil and Water Conservation Districts that administer the Bay Act and was advised that there were no unforeseen circumstances.	
31)	What would the cost estimate be if the Board of Supervisors wanted to offer a \$0.10 per foot incentive to farmers to aid in fencing?	Robinson	<p>The Soil and Water Conservation District (SWCD) currently provides \$3.33/linear foot in cost-share (75% based on an average cost of \$4.44/linear foot) to offset fencing expenses. The Board would likely need to establish a lump sum to assist in this effort, as the amount of fencing varies.</p> <p>The District is still signing up cost share funds for FY10, so a final figure on cost-shared fencing will not be available until the end of the fiscal year in June. To date, the District has cost-shared on 21,903 linear feet of fence (this includes both Catoctin TMDL cost-share and regular Ag BMP cost-share). In addition, another 33,120 linear feet is currently contracted to be installed prior to the end</p>	

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			<p>of the fiscal year, for a current total of 55,023 linear feet. Therefore, a 10 cent County incentive per linear foot of stream fence would cost the County \$5,502.30.</p> <p>Staff notes that a 10 cent per foot contribution to fencing would not provide a significant benefit for the average farmer. On a 1000-foot fencing project costing a total of \$4,400, the District could hypothetically provide \$3,300 in cost-share, leaving the farmer to pay \$1,100. The 10 cent County assistance would give the farmer an extra \$100, reducing the overall cost to \$1,000.</p>	
32)	How is cost-share assigned; is it a streamlined process? If a farmer cannot obtain cost-share and cannot obtain loans, what is the alternative for compliance?	Syska	<p>There are federal and state programs for cost-share. The most common cost-share program, which would apply to the draft amendments, is the Virginia Agricultural BMP Cost-Share Program administered by the SWCD. Cost-share is administered on a voluntary basis.</p> <p>DCR develops cost-share funding priorities by watershed based upon a comprehensive data analysis every two years. The priority watersheds for agricultural cost share funding are generally located in western Loudoun. This is principally due to the fact that those watersheds would benefit most from the implementation of agricultural BMPs (e.g., while a segment of Broad Run and a segment of Catoctin Creek may both be impaired, Catoctin Creek is more likely to benefit from agricultural BMPs, while Broad Run is more likely to benefit from urban BMPs to improve water quality).</p> <p>Out-of-pocket expenditures are required where cost-share and loans are not available. There is a 25 percent state tax credit for the cost of installing BMPs.</p>	
33)	When will staff be able to confirm the amount of cost-share that will be available to assist in implementing the regulations?	Robinson Syska	<p>The SWCD was allocated slightly under \$400,000 for Ag BMP cost share in FY10. This is not solely for fencing installation but also includes cover crops, tree plantings, water trough systems, etc. This was part of the total \$20 million statewide Ag BMP program allocation for the year.</p> <p>Outgoing Governor Kaine's proposed FY11 statewide budget for Ag BMP cost share was \$14.1 million. Governor McDonnell has reduced that proposal to \$10 million, to be funded through a new recordation tax, which would have to be approved by the General Assembly. So the amount of funding that will be allocated to the SWCD by the State for Ag BMPs this coming fiscal year is currently unknown.</p> <p>Staff notes that there may also be opportunities to pursue grant funding to</p>	

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34)	Clarify who must currently have a Best Management Practice (BMP) and how the results of BMPs are currently tracked?	Syska	<p>support implementation of the ordinance following adoption.</p> <p>Currently, the application of agricultural BMPs is typically voluntary; however, BMPs are required to be implemented in some cases in order to acquire state and federal aid (e.g., for State-regulated Confined Animal Feeding Operations). The SWCD and the Natural Resources Conservation Service track the implementation of BMPs on agricultural land. BMPs are mandatory for urban development under the County's stormwater management ordinance.</p> <p>The Virginia Department of Conservation and Recreation (DCR) recently invested \$500,000 in the development of an automated, web-based tracking system, which monitors the installation of cost-shared agricultural BMPs throughout the State.</p> <p>The cost-shared BMPs each have an associated soil loss reduction estimate. The number of animal units excluded from the stream is also tracked. There are also additional programs that track a multitude of other BMPs (e.g., manure storage facilities, nutrient management planning, and tree planting).</p> <p>The sediment and nutrient removal capabilities of agricultural and urban BMPs are widely recognized. Specific removal rates are likely to be assigned to these BMPs during development of the Chesapeake Bay Total Maximum Daily Load (TMDL), which is being developed by the Environmental Protection Agency, with a December 2010 completion goal.</p>	
35)	Can a Farm Management Plan be used as a BMP in lieu of buffering or fencing?	Austin	The BMPs required to offset agricultural encroachments into the buffer are included as part of the Farm Management Plan. The plan itself does not constitute a BMP. The Board opted not to pursue the performance criterion requiring Farm Management Plans for all agricultural activities.	Planning Commission accepted staff's recommendation.
36)	What percentage of our farms are organic?	Syska	Estimates show that less than 1% of Loudoun farms are certified organic. A vast majority of the farms incorporate many organic production principles, but elect not to pay the certification fees. Most farmers do not over-apply fertilizers and only apply fertilizer based upon soil needs, determined by a soil analysis and expected crop uptake.	
37)	List all agencies (Federal, State, local, other) from which farmers must now get approvals in order to farm. How can compliance be coordinated? Can they be integrated into one policy rather than several?	Syska	Staff is unaware of any existing agency approvals required to farm property. Approvals are required in conjunction with certain activities, such as State permits for Confined Animal Feeding Operations and local grading permits for agricultural structures. Regulatory/permit duplication has not been identified as concern to date.	

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38)	Review definitions in the Revised General Plan, the Countywide Transportation Plan, the Zoning Ordinance, and the Chesapeake Bay Preservation Ordinance (CBPO) and provide consistency.	Urban Stakeholders	Staff has reviewed the definitions and maintained consistency in the proposed amendments where appropriate. There is some variation between the Zoning Ordinance and the Chesapeake Bay Preservation Ordinance due to the fact that the definitions outlined in the CBPO are specific to that section of the County Codified Ordinances. This is consistent with other chapters in the Codified Ordinances, which provide definitions specific to each Chapter.	Planning Commission accepted staff's recommendation.
39)	Include a provision providing density credit for areas within the RPA and the floodplain consistent with the Revised General Plan.	Urban Stakeholders Sally Hankins	Section 1222.07.d of the CBPO permits density credit for the RPA and RMA. Section 4-1511 of the Zoning Ordinance is proposed for amendment to permit density credit for the floodplain.	Planning Commission accepted staff's recommendation.
40)	Ensure that adoption of the requirements will not negatively impact the County's current and future economic development opportunities and expansion of the County's commercial tax base. Stakeholders with experience applying the Act throughout the Commonwealth should be represented and the following topics should be addressed: the RPA delineation process, locational clearance submission requirements and process, the scope and application of the Water Quality Impact Assessment, Board of Supervisors review of exceptions concurrent with legislative applications, flexibility in adopting the regulations since adoption is voluntary, and the applicability of including connected wetlands into the RPA given the Board's direction. The proposed ordinances will have an impact on economic development in the County.	Urban Stakeholders, John Whitmore, Russ Gestl, John McClintic	Staff has evaluated these topics through the development of the amendments and the stakeholder review and several of these topics are specifically addressed within this response matrix. Staff notes that the regulations have been successfully applied in the 84 Tidewater localities since the early 1990s and that local ordinances from surrounding jurisdictions were consulted in drafting the proposed amendments. Furthermore, several of the stakeholders that are actively participating in the process have had extensive experience implementing the regulations in other jurisdictions and have provided specific comments in regard to these items, many of which have been integrated into the draft policies and regulations.	Planning Commission accepted staff's recommendation.
41)	The adopted RPA map should be used for land use applications without the need to perform a site-specific delineation. Many land use applications will not impact RPAs, but will have to perform delineations.	Urban Stakeholders	The enabling regulations (9VAC10-20-80.D) require that a site-specific determination of perennality be made or confirmed by the local government as part of the plan of development review process (9VAC10-20-105). As currently drafted, the amendments allow the Administrator to waive the RPA delineation provided that there are no streams or water bodies within the limits of disturbance, nor within 300 feet of the limits of disturbance.	Planning Commission accepted staff's recommendation, but noted that wetlands were not included in the list of features.
42)	Storm sewer outfalls and stream and wetland restoration projects should be included as Exempt Uses. Alternatively, clarify that stream stabilization, stream restoration, wetlands creation, wetlands restoration, and wetlands enhancement are water dependent uses permitted in the RPA. Add new section 1222.11.f allowing the construction,	Urban & Environmental Stakeholders Mike Rolband, Jeff Nein, NVBIA/NAIOP	Storm sewer outfalls and stream restoration projects are not designated as exempt uses in the enabling regulations. These uses are designated as water-dependent facilities in Section 1222.05 of the CBPO and are permitted in the RPA following review and approval of a Water Quality Impact Assessment.	Planning Commission accepted staff's recommendation.

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	monitoring, and maintenance of stream stabilization, stream restoration, stream enhancement, wetlands creation, wetlands restoration, or wetlands enhancement if conducted in accordance with erosion and sediment control requirements.			
43)	<p>Essential private utilities including septic and water line connections required to make a lot buildable should be designated as exempt uses subject to the criteria in Section 1222.11 requiring minimal disturbance.</p> <p>Amend Section 1222.11 to add “storm drains and sewers and their outfall structures,” to change “water lines” to “water lines including connections to wells,” to change “sanitary sewer lines including pump stations” to “sanitary sewer lines including pump stations, sewer laterals, and lines connecting to septic fields.”</p> <p>How does the ordinance affect well drilling?</p>	Urban Stakeholders, NVBIA/NAIOP Syska	Installation of water wells is exempt within the RPA. Septic systems and septic lines are not designated as exempt or permitted uses within the RPA in the enabling regulations. The Chesapeake Bay Local Assistance Division has provided guidance on this topic indicating that new lots should be platted to avoid the remote placement of drainfields that require impact to the RPA. Section 1222.19 outlines provisions for an administrative waiver that permits disturbance to the RPA to accommodate a reasonable buildable area for a principle structure and necessary utilities for existing lots of record where this situation may occur on existing lots of record.	Planning Commission accepted staff’s recommendation.
44)	The draft amendments should maintain consistency with federal and state regulations. The RPA buffer should be measured from the Ordinary High Water Mark (OHWM) which is required to be delineated in conjunction with wetland delineations and the planting requirements should be consistent with mitigation planting requirements.	Urban & Environmental Stakeholders	The draft amendments have been revised so that the buffer is measured from the OHWM (and connected wetlands) as opposed to the channel scarline. Staff conferred with staff from Wetland Studies and Solutions regarding mitigation planting requirements and amended the planting requirements in Chapter 7 of the Facilities Standards Manual to avoid potential conflicts with mitigation planting requirements.	Planning Commission accepted staff’s recommendation.
45)	<p>Consider requiring that lots less than 20,000 square feet be platted outside the RPA, as opposed to requiring 40,000 square feet to be platted outside the RPA, for new residential lots.</p> <p>Amend Section 1222.16 of the CBPO and Section 1-205.M.1 and Article 8 of the Revised 1993 Zoning Ordinance accordingly.</p>	Urban Stakeholders, Jeff Nein, NVBIA/NAIOP	The goal of this provision is to ensure that enough useable lot area remains on the property exclusive of the RPA to facilitate the use of the lot. Prince William County requires a minimum of 20,000 square feet outside the RPA on residential lots. There may be an acceptable interim provision whereby lots served by public water and sewer may have sufficient area if 20,000 square feet is provided exclusive of the RPA, while lots on well and septic will require more area (e.g., the current standard of 40,000 sf) exclusive of the RPA. Staff seeks input from the Planning Commission regarding the desired approach.	Planning Commission supported the proposed interim solution to reduce the residential lot area to 20,000 sf exclusive of the RPA when the lot is served by public water and sewer. The Planning Commission further supported maintaining the requirement to delineate the yard from the RPA.
46)	Allow the Board of Supervisors to hear appeals.	Urban Stakeholders	Section 10.1-2109.F of the Chesapeake Bay Preservation Act permits localities to establish a 30-day appeal to the circuit court for any person aggrieved by a decision of a board established by the locality to hear cases regarding ordinances adopted pursuant to the Act. Section 1222.24 of the CBPO has been structured consistent with this enabling authority. Members of the Chesapeake Bay Review Board are appointed by the Board of Supervisors.	Planning Commission accepted staff’s recommendation.
47)	The definition of “effective vegetation” should be the same as “permanent vegetative cover” (i.e., 90% coverage of turfgrass to a minimum of two inches high) to allow	Urban Stakeholders	Section 1222.14 of the CBPO requires that vegetation that is “effective in retarding runoff, preventing erosion, and filtering nonpoint source pollution” shall be retained if present and established where it does not exist consistent	Planning Commission accepted staff’s recommendation.

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	turfgrass in the RPA.		with the requirements of the enabling regulations (9VAC10-20-130.3). The term “permanent vegetative cover” is not included in the draft amendments. It is an informal standard used by Soil and Water Conservation District staff to evaluate if the buffer area is being effectively managed to prevent concentrated flows of surface water from breaching the buffer area consistent with the enabling regulations (9VAC10-20-130.5.b). It is used primarily to evaluate livestock operations to determine if the functions of the buffer are maintained in conjunction with permitted grazing within the buffer. There are no provisions in the enabling regulations that permit the establishment of new turf and/or lawns within the Buffer Area.	
48)	Consider removing the requirement to physically mark the RPA boundary on the site due to the fact that the limits of clearing and grading are already required to be identified and the fact that the limits of clearing and grading may intersect the RPA boundary for permitted uses.	Urban Stakeholders	The referenced requirement has been removed from Section 1222.17 of the CBPO.	
49)	The proposed amendments create uncertainty as to how much and what land is affected. The economic effects are significant and have not been fully analyzed and understood, especially in the Rural Policy Area.	Urban Stakeholders	Staff has performed detailed analyses on the extent of the RPA as outlined in the draft Chesapeake Bay Preservation Area Map. It is estimated that less than 8 percent of the land in the County, including an estimated 7.5 percent of the land in AR-1 and AR-2, contains RPA. Approximately 40 percent of the RPA falls within the Major Floodplain, where development is already limited. The agricultural stakeholders and staff liaisons met on January 25, 2010 to discuss the Agricultural Fiscal Impacts. The results of this meeting were previously summarized in this matrix.	
50)	Properties within the RPA will be regulated which may affect the way structures are placed and land is used. Therefore, affected property owners should be given enhanced notification of these changes, an easy-to-understand guide on how the regulations will impact land use, and an opportunity to weigh in prior to the public hearing.	Urban Stakeholders	Staff hosted a Chesapeake Bay Preservation Act HOA Outreach Session on January 13, 2010, prior to the public hearing, to address how individual properties could be affected by the draft amendments. Related information is also available via the Chesapeake Bay Webpage (www.loudoun.gov/chesapeakebay), and a Chesapeake Bay Hotline and a Chesapeake Bay e-mail address have been established.	
51)	What degree of flexibility is available to the County in adopting a Chesapeake Bay Preservation Act program? Adoption of regulations is optional for Loudoun County, which allows flexibility. Can the Bay Act be phased in over a period of time if voluntarily adopted?	Urban & Environmental Stakeholders Mike Rolband, NVBIA/NAIOP, Syska	The County has the flexibility to determine the extent of RPA, the extent of the RMA, and which of the 11 performance criteria to pursue. The Board of Supervisors provided direction on these key decisions in conjunction with the Work Program approved on April 7, 2009. There are some other areas of flexibility that have been identified within this matrix in response to individual comments. Localities can select which of the 11 performance criteria to adopt and can adopt provisions at any time. Loudoun County has already adopted 3 performance criteria independent of the CBPO. The Board directed staff to	

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			draft policies and regulations related to 7 additional performance criteria. County Attorney Jack Roberts addressed this issue at the February 16, 2010 Planning Commission Work Session.	
52)	Provide stakeholders with copies of the revised drafts once they are available, prior to the Planning Commission Public Hearing.	Urban Stakeholders	An e-mail with the link to the revised drafts on the Chesapeake Bay Webpage (www.loudoun.gov/chesapeakebay) was e-mailed to the stakeholders and the Planning Commission on January 6, 2010.	
53)	Amend Section 1222.11.a of the CBPO to exempt “pedestrian trails up to 8 feet in width and appurtenant structures, such as bridges, shoulders, slopes, and walls.” Include appurtenant structures to allow certain facilities with passive recreational uses, such as benches along trails, consistent with the Revised General Plan.	Environmental Stakeholders, NVBIA/NAIOP	“Passive recreation without constructed facilities (except for pedestrian trails),” are exempt in Section 1222.11; thus, pedestrian trails may include constructed facilities such as bridges and benches.	
54)	Amend Section 1222.11.d to exempt private roads and driveways.	Environmental Stakeholders, NVBIA/NAIOP	Private roads and driveways are not exempt in the enabling legislation. They are designated as permitted uses in the RPA in Section 1222.12.c, consistent with the enabling legislation.	
55)	Correct the reference to the erosion and sediment control requirements in Section 1222.11.	Environmental Stakeholders, NVBIA/NAIOP	Section 1222.11.a.i and Section 1222.11.e.iv will be amended to reference Section 1222.17.iii.	
56)	To encourage redevelopment, amend Section 1222.05.p. and 1222.12.b where it reads “no further encroachment into the RPA” to read “no significant encroachment in the RPA.” Amend Section 1222.05.p (“Redevelopment”) and move the redevelopment requirements to Section 1222.12.b as follows: <u>“Redevelopment” means the substantial alteration, rehabilitation, or rebuilding of a property for residential, commercial, industrial, or other purposes where there is no net increase in impervious area by the proposed redevelopment within an RPA and no more than a net increase in impervious area within an RMA of 20% relative to conditions prior to redevelopment, or any construction, rehabilitation, rebuilding, or substantial alteration of residential, commercial, industrial, institutional, recreational, transportation, or utility uses, facilities or structures within an IDA.</u>	Environmental Stakeholders, NVBIA/NAIOP	The language provided in the referenced sections is consistent with the language specified in the enabling regulations and has not been revised as suggested. Staff recommends against accepting the suggested amendment due to the fact that it is not consistent with the enabling regulations. Staff notes that the structure of the ordinance is consistent in that redevelopment is addressed in both the permitted uses and definitions section, similar to other permitted uses (e.g., water dependent facility).	

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57)	Correct a typo in Section 1222.07.d to change “RPA” to “RPA and RMA,” to clarify that both the RPA and RMA will be included in density calculations.	Environmental Stakeholders	Section 1222.07 has been amended as suggested.	
58)	Remove the last two sentences of Section 1222.09 and amend FSM 7.501.A.1.a to clarify that the RPA must be delineated as required by Section 1222.08 on existing lots of record.	Environmental Stakeholders	Section 1222.09 and FSM 7.501.A.1.a have been amended as suggested and corresponding edits have been provided within the referenced sections, Section 1222.17.a.iii, and Chapter 1220 of the Codified Ordinances.	
59)	In order to clarify that the pollutant removal rates attributed to the buffer apply only to water sheet flowing across forested buffer areas, replace “Vegetation” in Section 1222.14.a with “A vegetative community comprised of native herbaceous, shrubs, and trees” and add the phrase “from land areas that sheet flow into it” to Section 1222.14.c.	Environmental Stakeholders	The referenced sections as currently worded are consistent with the requirements of the enabling regulations (9VAC10-20-130.3). FSM 7.304 has been updated and outlines the requirement to plant native herbaceous vegetation, shrubs, and trees, where applicable.	
60)	Eliminate the WQIA from Section 1222.19.a.iii to reduce the cost of home construction on such lots.	Environmental Stakeholders, NVBIA/NAIOP	The suggested amendment is not consistent with the enabling regulations (9VAC10-20-130.6), which require a WQIA for any proposed development in the RPA.	
61)	Change Section 1222.19.iv to 1222.19.iii and add two new subsections to eliminate staff subjectivity as to what is a reasonable level of impact similar to Fairfax County: iv. The proposed development shall not exceed 10,000 square feet of land disturbance in the RPA buffer, exclusive of land disturbance necessary for the installation of a soil absorption field associated with an individual sewage disposal facility and land disturbance necessary to provide access to the lot or parcel and principal structure; and v. The proposed development shall not create more than 5,000 square feet of impervious surface within the RPA buffer, exclusive of impervious surface necessary to provide access to the lot or parcel and principal structure.	Environmental Stakeholders	The current text does not establish a limit of disturbance due to the site-specific nature of each request. The individual constraints of each lot or parcel, including other applicable environmental ordinances, will need to be considered in evaluating waiver requests for loss of a buildable area. As noted in the comment, there is flexibility to establish a threshold to further define the permitted amount of disturbance whereby a project would be eligible for an administrative waiver. However, all disturbances above that threshold would have to be processed as formal exceptions.	
62)	Allow appeals of administrative decisions to be processed by the Board of Supervisors, as opposed to the Chesapeake Bay Review Board. Allow appeals of Chesapeake Bay Review Board decisions to be processed by the Board of Supervisors, as opposed to the circuit court. Fairfax County’s Chesapeake Bay Preservation Ordinance (Article 8) is	Environmental Stakeholders	Section 10.1-2109.F of the Chesapeake Bay Preservation Act permits localities to establish a 30-day appeal to the circuit court for any person aggrieved by a decision of a board established by the locality to hear cases regarding ordinances adopted pursuant to the Act. Section 1222.24 of the CBPO has been structured consistent with this enabling authority. The ordinance has been structured to allow administrative decisions to be appealed to the Chesapeake	

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	structured in this manner. This brings decision making to the officials, who are accountable to the public, and reduces time and court costs.		Bay Review Board due to the fact that they have expertise pertinent to agriculture, land development, and the environment, and that they are the entity responsible for reviewing exceptions. Members of the Chesapeake Bay Review Board are appointed by the Board of Supervisors.	
63)	Amend “uniform” to read “random” in FSM 7.304.B to facilitate a more natural appearance as a result of planting.	Environmental Stakeholders	Staff met with staff from Wetland Studies and Solutions, Inc. to discuss the planting recommendations provided by the Wetland Workgroup. FSM 7.304.B was modified from “uniform” to read “generally uniform.” This provision is intended to avoid clustering of plantings in one area.	
64)	Modify Table 2 (“Required Plant Densities for Buffer Areas”) in FSM 7.304.B to delete the plant spacing column, to select a plant density, as opposed to providing a density range, and to add shrub plantings.	Environmental Stakeholders	Staff met with staff from Wetland Studies and Solutions, Inc. to discuss the planting recommendations provided by the Wetland Workgroup. Table 2 has been amended as follows: the plant spacing column has been modified, a plant density has been selected for each plant type, and shrub plantings have been added.	
65)	Modify FSM 7.304.C.2 to allow herbicides to be used across the entire restoration area, coupled with disking to avoid competition from non-native grasses.	Environmental Stakeholders	Staff met with staff from Wetland Studies and Solutions, Inc. to discuss the planting recommendations provided by the Wetland Workgroup. Staff amended the text in 7.304.C.2 to clarify that “competing perennial vegetation shall be eliminated mechanically and/or with herbicides in 3-to 4-foot-wide circles or strips where trees will be planted” and to add the following text: “Broader application of herbicides may be utilized when establishing mitigation projects, on a case by cases basis.”	
66)	Modify FSM 7.304.D to incorporate the cover crop noted in 7.304.C.1 and to allow more diverse seeding mixtures than those listed in Table 7 consistent with mitigation projects and to remove several non-native species. Amend FSM 7.304.F.2 to allow tubes not to be used by the applicant if planting densities of seedlings/tublings are increased by 100 percent and to clarify that tubes are not required on 3-gallon plants.	Environmental Stakeholders	Staff met with staff from Wetland Studies and Solutions, Inc. (WSSI) to discuss the planting recommendations provided by the Wetland Workgroup. Table 7 has been amended based upon the plant specifications provided by WSSI to include the cover crop and to remove non-native species. Tubes are not required in FSM 7.304.F.2; they are included as one option for preventing or reducing wildlife damage. Applicants still have the option of proposing the suggested method in planting plans submitted for review.	
67)	Amend the text before or after Table 7 in FSM 7.304 as follows: <u>The first two species listed in Table 7 (<i>Lolium multiflorum</i> and <i>Setaria italica</i>) must be included for temporary erosion control and cover crop purposes. The remaining seed mixture should be chosen from the other species listed such that 1) at least two of the four suggested grass species with a 10 lbs/acre seeding rate are included, 2) a minimum of 18 additional species are selected, and 3) the species selected are appropriate for ecological conditions on the site. The total seeding rate, including <i>Lolium multiflorum</i> and <i>Setaria</i></u>	NVBIA/NAIOP	Staff recommends the suggested amendment be added at the end of the existing text in FSM 7.304.D: D. Site Stabilization In addition to the required plantings, the Buffer Area shall be stabilized using the Herbaceous Seed Mixture for Riparian Buffers outlined in Table 7. <u>The first two species listed in Table 7 (<i>Lolium multiflorum</i> and <i>Setaria italica</i>) must shall be included for temporary erosion control and cover crop purposes. The remaining seed mixture should be chosen shall be selected from the other species listed such that 1) at least two of the four suggested grass species with a 10 lbs/acre seeding rate are included, 2) a minimum of 18 additional species are</u>	

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	<u>italica, shall be at a minimum of 120 lbs/acre.</u> The Table is a long list with no guidance.		<u>selected, and 3) the species selected are appropriate for ecological conditions on the site. The total seeding rate, including Lolium multiflorum and Setaria italica, shall be at a minimum of 120 lbs/acre.</u>	
68)	Would the Dulles Area Association of Realtors (DAAR) welcome staff to discuss the details of the proposed ordinance and how it might affect individual properties?	Maio (12/3)	Staff is coordinating with DAAR on a meeting date to discuss the proposed Ordinance.	
69)	Is it a reasonable request to try to identify property owners who may be affected by the proposed regulations prior to the public hearing? Do homeowners need to be proactive? Concern that individual owners need to be better involved and notified. Propose written notice.	Bayless (12/3), Bill Baker	The interactive map (www.loudoun.gov/weblogis) made available on January 6, 2010 allows homeowners to identify how they may be affected. The County hosted an HOA Outreach Session on January 13, 2010 to provide an overview of the proposed amendments and discussed how they could affect HOAs and residential property owners, including a demonstration of how to use the interactive map. An invitation was sent to each of the County HOAs using the HOA contact list maintained by the Public Information Office. The stakeholders were also notified and encouraged to extend the invitation to their members. Staff also provided a similar overview at the November 10, 2009 Sugarland Run District Homeowner's Association Forum hosted by Supervisor Buckley. The County is required to provide newspaper notice for the public hearings associated with the proposed amendments. Countywide written notice (letters to property owners) is not required for the proposed amendments.	
70)	Can the state enabling legislation associated with the Chesapeake Bay Preservation Act be amended to facilitate an alternative approach? Did the Board consider alternative approaches?	Syska (12/3)	The General Assembly could amend the state legislation; however, staff is unaware of any proposed amendments related to the issues identified in this matrix. The Board of Supervisors considered several water quality protection options, including the reinstatement of the River and Stream Corridor Overlay District (RSCOD), a customized stream buffer ordinance, maintaining the current environmental overlays, and various RPA options. After reviewing the various water quality protection options, the Board elected to authorize the Chesapeake Bay Preservation Act Work Program and subsequent Resolution of Intent to Amend, choosing to pursue the least-restrictive RPA.	
71)	Which jurisdictions in Northern Virginia have adopted the Chesapeake Bay Preservation Act?	Chaloux (12/3)	Fairfax County, City of Fairfax, City of Falls Church, Prince William County, City of Alexandria, and Arlington County.	
72)	What would it cost to build a pool in the RPA? What is the economic impact on residents?	Syska (12/3), Edna Cross	The costs are associated with the RPA delineation, the Water Quality Impact Assessment, and any fees associated with approval of the formal exception. Staff deferred to the stakeholders present at the meeting. Mike Rolband estimated that it may cost as much as \$3,000 to \$4,000 to process an exception request to locate a pool within the RPA. Staff is in the process of requesting specific information from local consultants related to the cost to perform the RPA delineation, the Water Quality Impact Assessment, and any other required plans. Staff notes that the Administrator may waive the RPA delineation where	

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			there are no streams or water bodies within the limits of disturbance, nor within 300 feet of the limits of disturbance. There are additional costs associated with grading permit and septic pump-out requirements which are addressed in more detail elsewhere in this matrix.	
73)	Compare what Fairfax County and Prince William County have adopted to what is proposed.	Chaloux (12/3)	Staff consulted both the Fairfax County and Prince William County Chesapeake Bay Programs while preparing the draft regulations. Staff provided the Planning Commission with copies of these ordinances.	
74)	Request for a coordinated straw-horse from each group or the stakeholder group as a whole with ideas for publishing and disseminating data on how the regulations will affect homeowners, builders, and farmers, and who to call if they have questions.	Robinson (12/3)	No additional pertinent information has been received to date; however, staff is preparing information related to the key steps associated with specific activities.	
75)	Obtain samples from other jurisdictions on what has been done for public education and outreach.	Chaloux (12/3)	Staff has consulted and compiled web pages, fact sheets, and brochures from other jurisdictions as sample public education and outreach efforts.	
76)	In lieu of a septic pump out, a PVC filter device is an option. Concern that five-year pump-out requirement is too frequent for systems not operating at full capacity and an unnecessary financial burden.	Mike Rolband, Patrick Ryan, Bill Baker	Staff is aware of the option to require a plastic filter to be installed and maintained on the outflow pipe from the septic tank to filter solid material from effluent while sustaining flow to the drainfield. Staff conferred with the Health Department on the option and learned that it is not recommended due to the fact that these devices are often removed, rather than replaced, once they stop functioning. Septic system pump-out is part of the routine maintenance necessary to avoid septic system failures. The enabling regulations (9VAC10-20-120.7) specify the five-year timeframe, which cannot be increased. Staff recommends maintaining the septic pump-out requirement in order to avoid nutrient and bacteria pollution from leaching and failing systems. While this is one of the performance criteria that was included in the scope of the Work Program, the County has the option of not selecting it for adoption.	
77)	Amend Section 1222.05.d (“Best Management Practice or BMP”) of the CBPO to reflect actual practice, we suggest the following wording change: . . . or combination of practices that are the most <u>an</u> effective and practical means of . . .	NVBIA/NAIOP	Staff recommends against accepting the suggested amendment. This definition applies to both agricultural and urban BMPs. Section 1222.15 of the CBPO requires BMPs on agricultural land that address the more predominant water quality issue as determined by the SWCD. Urban BMPs required by Section 1222.17 are consistent with Chapter 1066, which should alleviate any concern related to consistency with existing requirements.	
78)	Amend Section 1222.05.m (“plan of development”) to remove rezoning concept plans and preliminary plats of subdivision from the definition for “plan of development.” The proposed definition results in the same level of RPA	NVBIA/NAIOP	The enabling regulations require that the County develop a plan of development for all development and redevelopment within a CBPA exceeding 2,500 sf, whereby the RPA is confirmed via a site-specific evaluation and compliance with the regulations is evaluated. The RPA delineation is necessary at the time of rezoning, special exception, and preliminary plat to determine if an exception	

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	analysis being required for conceptual and preliminary plans, as final development plans. We recommend that similar logic should be used for when an RPA delineation is required as that spelled out in FSM Chapter 7 concerning the timing associated with including wetland data for plan review. Specifically rezoning concept plans and preliminary plats of subdivision should be allowed to show the RPA from the County mapping data and not need a detailed delineation.		is needed. Not requiring this information would result in the potential for substantial conformance issues later in the development process, which add delay and cost for the applicant, the Board, and staff. Staff notes that the wetland information required to be depicted on the plan is for the purpose of ensuring that grading permits are not issued for disturbances to wetlands prior to the approval of federal and state wetland permits. It is not related to any specific local ordinance requirements related to impacts or use of these areas, such as the draft CBPO.	
79)	Amend Section 1222.05.e (“Buffer Area”) to make the following correction: . . . means the 100-foot Buffer Area . . .	NVBIA/NAIOP	Staff recommends accepting the suggested amendment.	
80)	Amend Section 1222.05.r (“Resource Protection Area”) as follows: “Resource Protection Area” means (i) <u>Any wetland connected by surface flow to, and contiguous to, a water body with perennial flow, (ii) a 100-foot buffer area located adjacent to and landward of any wetland described in (i) above, and (iii) a 100-foot buffer area located along both sides of any water body with perennial flow, as measured from the OHWM.</u>	NVBIA/NAIOP	Staff recommends the following amendment: “Resource Protection Area” means (i) <u>Any wetlands connected by surface flow to, and contiguous to, a water body with perennial flow, and (ii) a 100-foot Buffer Area located adjacent to and landward of any wetlands described in (i) above, and (iii) a 100-foot buffer area located along both sides of any water body with perennial flow, as measured from the OHWM.</u> Staff also recommends the following amendment to Section 1222.07.b, consistent with the revised language: i. All w Wetlands connected by surface flow and contiguous to water bodies with perennial flow; and ii. A 100-foot Buffer Area measured horizontally from, and located adjacent to and landward of wetlands described in (i) above and along both sides of any water body with perennial flow, as measured horizontally from the OHWM.	
81)	There is support for the inclusion of the RPA in the land area calculation, for the purpose of calculating density. However, in order to give this provision real effect, the Zoning Ordinance should be amended to provide flexibility regarding minimum lot size, minimum setbacks and yards, and maximum heights. A real problem arises when RPA runs through the middle of a property, leaving insufficient developable space on either side of the RPA.	NVBIA/NAIOP	The referenced amendments are not addressed by the enabling regulations. This situation could possibly be addressed through a variance of the Zoning Ordinance requirements or through the exception process of the CBPO. Such changes were not considered as part of the Work Program and were not advertised. Development of the requested amendments would require that the timeline approved by the Board of Supervisor’s with the Work Program be revised by an action of the full Board. Therefore, staff recommends that these changes be considered as a separate amendment in the future if it is determined that they are needed.	

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82)	<p>Amend Section 1222.08.a as follows:</p> <p>The Administrator may <u>shall</u> waive the RPA delineation if sufficient documentation is provided that there are no streams or water bodies within the limits of disturbance, nor within 300 feet of the limits of disturbance.</p> <p>The word “may” gives the administrator overly broad discretion since “sufficient documentation” has been provided.</p>	NVBIA/NAIOP	<p>Staff recommends the following amendment to Section 1222.08:</p> <p>The Administrator may <u>shall</u> waive the RPA delineation if sufficient documentation is provided that there are no streams, wetlands, or water bodies within the limits of disturbance, nor within 300 feet of the limits of disturbance.</p>	
83)	<p>Provide a timeline for the Administrator to act on the RPA delineation Section 1222.08.c; 30 days is suggested.</p>	NVBIA/NAIOP	<p>Staff recommends against establishing a time frame due to the potential need to engage in further discussion with the applicant regarding the components of the RPA delineation. Providing a limit could result in an RPA delineation having to be disapproved and resubmitted if requests for additional information are not resolved within the specified time frame. This could result in additional fees associated with re-submission of the RPA delineation. Furthermore, RPA delineations will typically be submitted with development applications, which have specified review timelines.</p>	
84)	<p>Amend Section 1222.10.a as follows:</p> <p>. . . is reconstructed or replaced substantially in the same location and creates no more . . .</p> <p>Reconstruction can involve slight re-arrangements of a structure, without necessarily adding additional square footage or impervious cover.</p>	NVBIA/NAIOP	<p>The current language was adapted from the Fairfax County Chesapeake Bay Ordinance. However, staff recommends accepting the suggested amendment to provide the marginal flexibility requested.</p>	
85)	<p>Amend Section 1222.14.a to create more certainty that if existing vegetation is maintained, it is adequate.</p>	NVBIA/NAIOP	<p>Staff recommends replacing the existing text in Section 1222.14.a with the following amendment to clarify the issue, while maintaining consistency with the enabling regulations (9VAC10-20-130.3):</p> <p><u>To minimize the adverse effects of human activities on the other components of the RPA, state waters, and aquatic life, a 100-foot wide Buffer Area of vegetation that is effective in retarding runoff, preventing erosion, and filtering nonpoint source pollution shall be retained if present and established where it does not exist.</u></p>	
86)	<p>Remove Section 1222.14.e.</p> <p>The requirement should be for an undisturbed natural area. As long as the existing amount of ground cover is maintained, planting of the entire RPA is unreasonable.</p>	Mark Trostle, NVBIA/NAIOP	<p>The suggested amendment is not consistent with the enabling regulations (9VAC10-20-130.3.b), which require the full 100-foot wide buffer to be reestablished with woody vegetation when land uses such as agriculture or silviculture in the buffer cease and the lands are proposed to be converted to other uses. An undisturbed natural area is required to be retained where present</p>	

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	Unclear what the change of use may be.		and established where it does not exist in all other circumstances (9VAC10-20-130.3).	
87)	Recommend establishing a 10-foot setback from the principal residential structure to the RPA in lieu of requiring the yard to be measured from the RPA. Amend Section 1222.16.b of the CBPO and Article 1-205.M.2 and Article 8 of the Revised 1993 Zoning Ordinance accordingly.	NVBIA/NAIOP	Staff evaluated the option of establishing a uniform setback from the RPA. However, side and rear yards vary by Zoning District making it difficult to establish a uniform setback and the goal of this provision is to maintain an unencumbered yard. Furthermore, allowing the yard to be located within the RPA may generate confusion due to the fact that some uses permitted in yards are not permitted in the RPA without an exception.	
88)	Remove the requirement outlined in Section 1222.17.a.vi due to the fact that it overlaps with the requirement in Section 1222.17.a.i.	NVBIA/NAIOP	Staff recommends against accepting the suggested amendment. The two referenced sections pertain to different issues. Section 1222.17.a.vi requires stormwater management BMPs, while Section 1222.17.a.i requires BMP maintenance. While both refer to the Stormwater Management Ordinance (Chapter 1096) it is important to acknowledge that the County is addressing both of these performance criteria.	
89)	Replace “Buffer Area” with “RPA” in Section 1222.19.	NVBIA/NAIOP	The suggested amendment is not consistent with the enabling regulations (9VAC10-20-130.4), which specify that the encroachment applies specifically to the Buffer Area.	
90)	Replace “may” with “shall” in Section 1222.19. The Administrator has too much discretion in cases where the specified findings have been met.	NVBIA/NAIOP	Staff recommends against accepting the suggested amendments. The term “may” is consistent with the language used in the enabling regulations (9VAC10-20-130.4).	
91)	Amend section 1222.19.a to read: ...for a principle structure and necessary <u>access, driveway</u> and utilities ...	NVBIA/NAIOP	The suggested amendment is not consistent with the enabling regulations (9VAC10-20-130.4), which specify that the encroachment shall be the minimum necessary to achieve a reasonable buildable area for a principal structure and necessary utilities. Furthermore, private roads and driveways are permitted uses in the RPA, as outlined in Section 1222.C.	
92)	Amend Section 1222.21 to read: The Administrator may shall waive the Performance Criteria ... The Administrator has too much discretion in cases where the specified findings have been met.	NVBIA/NAIOP	Staff recommends against accepting the suggested amendments. The term “may” is consistent with the language used in the enabling regulations (9VAC10-20-150.C).	
93)	Amend Section 1222.22.b as to delete the following requirement: ... one member from each election district and one at large member, with demonstrated knowledge of and interest in	NVBIA/NAIOP	Staff recommends against accepting the suggested amendment. Evaluation of the required findings of approval for granting an exception (outlined in Section 1222.23.a.) requires specific knowledge and experience related to water quality for evaluating potential impacts on water quality and appropriate conditions to prevent water quality degradation. Environmental consultants, who have a	

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	<p>environmental issues and . . .</p> <p>The Board should have the most qualified and diverse members to assure the greatest success in implementing and administering this Ordinance. For that reason limitations on membership should not be written into the Ordinance.</p>		demonstrated understanding of both environmental issues and development constraints would meet the established criteria for appointment to the Review Board.	
94)	<p>Amend Section 1222.23 as follows:</p> <p>. . . that is not authorized by an administrative waiver under Section 1222.19, or Section 1222.20, <u>or Section 1222.21</u>; or any proposed . . .</p> <p>The waiver of Performance Criteria can be granted by the Administrator per 1222.21.</p>	NVBIA/NAIOP	Staff recommends accepting the suggested amendment.	
95)	<p>Strike the following text from Section 1222.25:</p> <p>Where plantings are required to restore the property to the condition existing prior to the violation, the restoration plan shall specify the types and amount of vegetation to be planted consistent with the planting plan requirements of the Facilities Standards Manual and a schedule for the installation of the plantings, and shall include a provision requiring supplemental plantings to be provided in the event that a targeted stocking of seventy-five (75) percent survival of the required plantings shown on the restoration plan, with uniform distribution, is not achieved within one year of planting as determined by the Administrator.</p> <p>This section should not outline the methods to restore a violation.</p>	NVBIA/NAIOP	Staff recommends against accepting the suggested amendment. The referenced sentence elaborates on the standards associated with a restoration plan, which is referenced earlier in the same section (Where the Administrator finds a violation, the Administrator shall order a correction of the violation. Such correction may include restoring the property to the condition existing prior to the violation in accordance with an approved restoration plan). This section of the Ordinance directly correlates with and requires the required minimum vegetation replacement rates for restoration plans and stocking requirements outlined in FSM 7.304.B to be implemented. Staff notes that similar restoration requirements are commonly outlined by other Bay Act jurisdictions, including Fairfax County and Prince William County.	
96)	<p>Amend Section 1222.27 as follows:</p> <p>Whenever any provision of this Chapter imposes a greater requirement or a higher standard than is required in any State or Federal statute or other County ordinance or regulation, the provision of this Chapter shall govern, <u>unless such State or Federal law pre-empts the provision of this Chapter in question.</u></p>	NVBIA/NAIOP	Staff recommends against accepting the suggested amendment. The amendment assumes that future Federal or State laws will limit the authority of the current State enabling regulations. These types of conflicts are typically identified and resolved during the regulatory process. In the unlikely event that this should occur, the County would have an opportunity to respond by amending the ordinance in response to specific changes to the State enabling regulations.	
97)	There is a concern regarding draft amendments to Chapter 1220.05.x and Chapter 1220.06.c of the Codified Ordinances	NVBIA/NAIOP	The referenced amendments are required to maintain consistency with Section 1222.17.a.ii, which requires a plan of development to be submitted for all	

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	<p>that remove the option for an agreement in lieu of a plan for single-family home construction.</p> <p>Several years ago Loudoun County found itself having grading permit compliance issues with the State. One of the things done to resolve this issue was the County added provisions for an agreement in lieu of a plan, which the draft amendments propose to remove. The agreements went a long way towards the County and State reaching a very positive agreement on the handling of grading permit approvals. It is also an efficient tool that the applicant can utilize rather than having to always prepare a plan.</p>		<p>development and redevelopment within a CBPA exceeding 2,500 sf of land disturbance. The plan of development is the primary mechanism by which compliance with the draft amendments is determined. The Agreement in Lieu of a Plan is an optional provision of the Virginia Erosion and Sediment Control Law that localities may elect to incorporate in their local ordinances. The agreement does not provide sufficient information to evaluate compliance with the CBPO. Removal of the agreement requires the submission of an erosion and sediment control plan for land disturbances exceeding 2,500 sf, including single-family homes. The erosion and sediment control plan is not required to be prepared or certified by an engineer. Under the current draft, an engineered plan is only required in cases where grading is proposed within the RPA or within 300-feet of the RPA, or where staff identifies the potential for RPA features to be present within the proposed limits of clearing and grading or within 300-feet of the proposed limits of clearing and grading.</p>	
98)	<p>Amend FSM 7.501.A.2.b as follows:</p> <p>. . . quality, and history) of all tree cover types present <u>within the proposed area of disturbance</u>, within the RPA, and shall identify</p> <p>The Tree Cover Inventory appears to be required for the entire RPA when a Major WQIA is prepared.</p>	NVBIA/NAIOP	<p>Staff recommends against accepting the suggested amendment. The Tree Cover Inventory is only required for disturbances to the RPA that exceed 2,500 square feet or encroach into the seaward 50-foot buffer. The Tree Cover Inventory is useful in identifying alternatives for minimizing impacts to existing vegetation within the RPA and for identifying mitigation opportunities, as required by the conditions for permitted uses and the WQIA.</p>	
99)	<p>FSM Chapter 8 deals with overall plat and plan content. As such, there does not seem to be the process to submit an RPA delineation for approval, separate of an actual land development application. Can a property owner or applicant submit an RPA delineation for approval separate of a plan of development?</p>	NVBIA/NAIOP	<p>There is nothing in the FSM that precludes the submission of an RPA delineation separate of a plan of development. Staff is in the process of developing several different application types for the Land Management Information System (LMIS) to track and manage information submitted in compliance with the ordinance, with an accompanying fee schedule. One of the application types is an “RPAD” (RPA Delineation), which will support this approach.</p>	
100)	<p>Amend the following sections of Chapter 8 to read:</p> <p>8.102.A.41 8.106.A.41 8.109.B.4 8.111.8</p> <p>. . . the location of certain features of the RPA (the Ordinary High Water Mark (OHWM) of perennial water bodies, connected wetlands, where applicable, and the Buffer Area. .</p>	NVBIA/NAIOP	<p>Staff recommends against accepting the suggested amendment. The implication that there are current “specific plan requirements” to show RPA features in the existing FSM is inaccurate. Furthermore, staff met with the FSM Committee, which approved the current approach for organizing the required information.</p>	

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	<p>The details associated with an application for RPA approval do not need to also be shown on subsequent plan applications. It is redundant, expensive, and unnecessary to show this data multiple times. Showing only the approved RPA line is all that is necessary. The specific plan requirements for showing specific features is adequate.</p>			
101)	<p>Amend FSM 8.300.A.2 as follows:</p> <p>... and shall also include plantings planting plans required by Chapter 1222.</p> <p>The new wording states the bonding of a plan, versus the bonding of an improvement. Since specific items are bonded this wording should be modified.</p>	NVBIA/NAIOP	Staff recommends accepting the suggested amendment.	
102)	<p>What is Loudoun County's definition of a perennial stream? How was the suggested buffer requirement determined? What and Who is the Potomac Watershed Roundtable and have they provided any testimony on the draft amendments? Provide copies of the Fairfax and North Carolina Perennial Stream Protocols.</p>	Syska	<p>Water body with perennial flow is defined in Section 1222.05.v of the CBPO, consistent with guidance provided by CBLAD. The Potomac Watershed Roundtable is "a regional government-citizen forum whose purpose is to promote collaboration and cooperation on environmental concerns, especially water quality issues, among the various local governments and stakeholder interest groups residing within the Virginia side of the middle and lower Potomac River watershed." Supervisor Kurtz and Jim Christian, Loudoun SWCD Chairman are members. David Ward with the Department of Building and Development and Peter Holden of the Loudoun SWCD are alternate members. Additional information on the Potomac Watershed Roundtable is available at: http://potomacroundtable.org/. They have not provided any testimony on the draft amendments to date. The Fairfax and North Carolina Methods are available on the CBLAD website at: http://www.dcr.virginia.gov/chesapeake_bay_local_assistance/guid.shtml. These methods are approved by DCR for determining perenniality and may be used for the Perennial Flow Determination if approved by the Director as outlined in FSM 7.500.A.1.a.</p>	
103)	<p>Provide an "Implementation Matrix" or flow chart outlining the series of steps associated with the requirements of the proposed regulations as they apply to individual homeowners, HOAs, farmers, and the business community. For example, the steps associated with construction of a gazebo or pool within the RPA. Host another meeting with the agricultural stakeholders to go over the scenarios.</p>	Al Van Huyk Klancher Syska	Staff is in the process of developing a series of scenarios that may be affected by the proposed regulations and the associated steps required. Staff seeks additional direction from the Planning Commission regarding the need to host another agricultural meeting. Hosting additional meetings with stakeholder groups will likely require that the timeline approved by the Board of Supervisor's with the Work Program be revised by an action of the full Board.	

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104)	Concern that the FSM Public Review Committee did not get a chance to review changes subsequent to the December 3, 2009 Stakeholder Roundtable. Would like to review any other changes proposed. Allow the FSM PRC review any proposed amendments to the ordinances prior to sending them to the Board of Supervisors.	Bill Fissel, Klancher Maio	Staff forwarded the FSM PRC redline versions of the current drafts depicting the edits made between the December 3, 2009 Stakeholder Roundtable Meeting and the Planning Commission Public Hearing Draft via e-mail on January 21, 2010. Staff will forward the proposed amendments that reflect the Planning Commission recommendations to the FSM PRC and the other stakeholders in preparation for the Board Public Hearing. Comments from the FSM PRC will be addressed as part of the Board Public Hearing process. Staff previously met with the FSM Committee and incorporated their comments on the FSM prior to distribution of the November 6, 2009 Stakeholder drafts.	
105)	Can the area of disturbance, proposed to be reduced from 10,000 sf to 2,500 sf, vary between zoning districts or must the same limitation be adopted Countywide.	Klancher	The disturbance threshold must be applied uniformly to all areas designated as RMA, so it cannot vary between zoning districts.	
106)	Is the 2,500 sf disturbance threshold mandatory for that particular performance criterion or can it be some other number than the current 10,000 sf?	Maio	The enabling regulations specify a land disturbance threshold of 2,500 square feet; however, the County does not have to adopt this performance criterion. As an alternative, the County can pursue a threshold between 2,500 square feet and 10,000 square feet, similar to the current 5,000-square foot threshold for commercial, townhome, and condominium projects, by amending the Erosion and Sediment Control Ordinance. However, such a threshold would not be considered to be a performance criteria pursuant to the CBPO.	
107)	Will access to adjacent parcels be required to correctly identify all affected areas?	George Rhodes, Klancher	Property owners would be asked to obtain information on adjacent parcels; however, in cases where access is denied and the features cannot be discerned from the adjacent property, the map will provide the default location of features.	
108)	Have exception criteria for the review of accessory structures been established for use by the Board-appointed Review Board?	Klancher	The exception findings outlined in Section 1222.23 of the CBPO constitute the exception criteria.	
109)	Can the RPA delineation be limited to new development only?	Ruedisueli	The enabling regulations require that a site-specific RPA delineation be required for all proposed development, including building permits, in order to ensure that the resources are properly identified and protected. The County may perform the site-specific evaluation or require the applicant to conduct the evaluation.	
110)	Is the 300-foot distance measured from the Ordinary High Water Mark (OHWM)? Is this a mandatory criterion? What is the justification?	Maio	Section 1222.08.a of the CBPO allows the administrator to waive the RPA delineation in cases where there are no streams or water bodies within the limits of disturbance, nor within 300 feet of the limits of disturbance. The ordinance does not specify where the 300-foot distance is measured from. Presumably, there would not be an OHWM already approved by the Army Corps of Engineers for most of the affected properties. The 300-foot distance is based upon guidance provided by CBLAD regarding consideration for whether or not a site-specific determination is necessary for areas outside of mapped RPAs. The presumption is that it is unlikely that connected wetlands and the corresponding buffer would extend more than 300-feet from a stream or water	

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			body.	
111)	What is the rationale for requiring a Locational Clearance for less than 2,500 square feet of disturbance on any parcel containing RPA, as outlined in Section 1222.09 of the CBPO?	Maio	The rationale for requiring a Locational Clearance is to ensure that any proposed uses in the RPA are exempt or permitted in order to avoid disturbances within the RPA contrary to the draft amendments and to determine when a grading permit will be required.	
112)	Can opportunities for administrative waivers be expanded?	Ruedisueli	The enabling regulations outline the specific types of development that are eligible for administrative waivers and the specific types of development that require formal exceptions. The regulations cannot expand upon the specific types of development that can be permitted by an administrative waiver.	
113)	There is no definition for accessory structures in the CBPO and the Zoning Ordinance only defines them for accessory dwellings in rural zoning districts. The assumption is that they include sheds, detached garages, pools, and structures other than dwellings.	Maio	The <u>Revised 1993 Zoning Ordinance</u> defines “Structure, Accessory” as follows: “A building or structure subordinate and incidental to, and located on the same lot with, a principal building, the use of which is customarily found in association with and is clearly incidental to that of the main building or to the use of the land, and which is not attached by any part of a common wall or roof to the principal building.”	
114)	Can detached structures of a limited size (e.g., less than 2,500 square feet) be constructed in the RPA with an Administrative Waiver (e.g., change Section 1222.20 to “Administrative Waiver for Minor Additions and Minor Structures”)?	Ruedisueli Maio	This issue was addressed in the December 3, 2010 stakeholder comment matrix. The enabling regulations and subsequent guidance from CBLAD clarify that detached accessory structures of any size are not permitted in the RPA without a formal exception.	
115)	Can an exception be provided for projects that do not require building permits (e.g., farm structures of any size and any structure less than the minimum size that requires a building permit)? The locational clearance required by Section 1222.09 would ensure that structures are not located within the RPA.	Ruedisueli	Staff is conferring with the County Attorney on the referenced question.	
116)	Expand Section 1222.09(a) to apply to areas of disturbance greater than 2,500 square feet that don’t require a building permit to ease the burden on the agricultural community.	Ruedisueli	Any disturbance exceeding 2,500 square feet requires a grading permit based on the Performance Criteria lowering the grading permit threshold outlined in Section 1222.17.iii.	
117)	Does Section 1222.11.(b) of the CBPO, which exempts all land disturbing activities below 2,500 square feet in size in the RMA conflict with the 300-foot rule outlined in Section 1222.09?	Ruedisueli	Staff acknowledges the observed conflict and recommends that Section 122.09.c. be amended to clarify that the engineered plan is required for land disturbing activity exceeding 2,500 square feet.	
118)	Amend Section 1222.14.d.ii to specify a width of 6-feet due to the fact that many homeowners have lawnmowers with 5-foot decks. Can access paths be created by mowing around existing trees?	Ruedisueli	Staff supports the proposed amendment. Mowing is not generally permitted within the buffer, but is acceptable for creating and maintaining a limited access path.	

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119)	What is the difference between a Minor WQIA and a Major WQIA?	Austin	The Minor WQIA applies to land disturbances of 2,500 square feet or less in the landward 50-feet of the Buffer Area and is less rigorous than the Major WQIA, which applies to disturbances that exceed 2,500 square feet and/or encroach into the seaward 50-feet of the Buffer Area. The Minor WQIA does not have to be developed by a professional engineer/land surveyor and the County may perform the RPA delineation.	
120)	FSM 7.501.A.1.f and A.2.j seem open-ended for a regulatory document. Doesn't the Director have that option anyway based upon professional judgment?	Maio	It is staff's understanding that the FSM must specify where additional information may be requested. This is similar to the language provided in the Fairfax County Chesapeake Bay Preservation Ordinance.	
121)	Are the basic infrastructure elements of urban development exempt from the WQIA (CBPO Sections 1222.18 and 1222.11 and FSM Chapter 7.501)?	Maio	Currently, roads, utilities, and water and sewer lines are exempt from the WQIA. However, staff has requested additional guidance from DCR on this matter.	
122)	Is there any potential for an Administrative Waiver of the WQIA for projects on existing lots for applications that are too small to require a building permit, where there is no alternative location?	Ruedisueli	The WQIA may only be waived by a formal exception. However, the CBPO includes a provision for Minor WQIAs for projects that disturb 2,500 square feet or less and that do not encroach into the seaward 50 feet of the Buffer Area. Minor WQIA standards are outlined in FSM 7.501.A.1; they do not have to be prepared by an engineer and they include an option for the County to perform the RPA delineation.	
123)	There does not appear to be a benefit to having a separate review board. If the process was simplified to minimize requirements for RPA delineation, while maximizing administrative waivers, staff could provide referrals and reports to the Planning Commission, which could function as the review board. Appeals can be made to the Board of Supervisors and the court, if necessary.	Ruedisueli	There are limited opportunities to minimize RPA delineation requirements and to expand administrative waivers; however, the Planning Commission could function as the review board. The issue of appeals was addressed in the December 3, 2010 stakeholder comment matrix. Review board decisions are appealed to circuit court as outlined in the Bay Act (Section 10.1-2109.F).	
124)	Since streams change course over time, does it make sense to require the RPA to be delineated with bearings and distances (FSM 8.103.2).	Ruedisueli	The RPA is only required to be measured in bearings and distances on record plats. It establishes a boundary from which to evaluate compliance with the draft amendments, similar to the floodplain boundary.	
125)	Provide the Commission with a copy of the enabling legislation.	Austin	Staff will forward the Commission a copy of the enabling legislation via e-mail prior to the February 25, 2010 work session.	
126)	Provide a copy of the Board of Supervisor's Intent to Amend.	Austin	The December 15, 2009 Intent to Amend is available on the Chesapeake Bay Webpage at www.loudoun.gov/chesapeakebay .	
127)	Provide a detailed analysis of areas of flexibility within the draft ordinance. Color code the draft such that text in black is required by the enabling legislation, text in blue is required by Board direction, and text in red is recommended by staff. For staff recommended provisions, please advise why recommended.	Austin	It would be difficult to separate these items into discrete parts. Staff recommendations were vetted by the Board in the process of authorizing the approved Work Program and the Intent to Amend. However, staff has and will continue to highlight areas of flexibility and key decision points within the construct of the issues Matrix.	

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128)	Provide a summary of legal challenges to County enacted Chesapeake Bay Ordinances and the results of such challenges.	Austin	Staff has referred this issue to the County Attorney's Office for a response. However, it should be noted that staff is unaware of any state regulatory amendments required as the result of formal legal challenges.	
129)	In response to Joe Paciulli's concerns, ask the County Attorney to opine regarding the probability of successful legal challenge of the elements of the proposed ordinance that have been pre-determined by the Board, if such elements are not subject to full examination and recommendations as part of the legislative process.	Austin	County Attorney Jack Roberts attended the February 16, 2010 Planning Commission Work Session to discuss this issue. Staff has engaged in ongoing coordination with the County Attorney's office in preparation of the draft amendments to ensure that they fall within the scope of the enabling regulations. Staff is prepared to advise the Commission regarding potential options for addressing concerns as review of the draft amendments proceeds. The proposed amendments are subject to full examination and recommendation as part of the legislative process, which is currently ongoing.	
130)	Provide discussion regarding not taxing property located within the RPA Buffer Area.	Austin	<p>Staff conferred with the County Assessor regarding taxing options. Not taxing real property is not an option unless the property is exempt. Property within the RPA does not meet existing qualification standards for exemptions. State legislation would have to be introduced to identify areas designated as RPA as a special class for consideration of a non-taxable status.</p> <p>The value of the property based on the use is subject to the opinion of the Assessing Authority. If the provisions of the draft amendments diminish the capacity and use of the land, the value is then reduced. The RPA portion of the property can be considered to be detrimentally impacted if the RPA encumbers the use. This loss could reduce the market value of the property resulting in a diminished tax burden. However, waterfront/water view properties with riparian access are frequently in greater demand and; therefore, may carry a greater market value, offsetting any potential reductions.</p>	
131)	What is the difference between exempt and permitted uses under the ordinance?	Austin	Exempt uses are exempt from the provisions of the ordinance, while permitted uses must comply with the provisions of the ordinance (e.g., RPA delineation, WQIA, etc.). Several of the exemptions are commonly referred to as "conditional exemptions" because they include conditions whereby the use is considered exempt.	
132)	Would Loudoun be the first County to opt-in? Do they track for compliance only or for results? Provide a list of all 84 jurisdictions in Virginia who have adopted the Act. What "unforeseen consequences have these jurisdictions experienced and how are they handling them?	Austin Syska	Loudoun would be the first non-Tidewater locality to officially opt-in to the Chesapeake Bay Act. A total of 9 of the 84 Tidewater localities, where only a portion of the County is tidal and subject to the requirements, extended the requirements Countywide. In addition, Albemarle County has adopted some of the provisions in their Water Protection Ordinance, although not in their entirety. CBLAD requires all 84 localities to provide an Annual Report, which is compliance based. A map of the 84 localities is depicted in the December 1, 2008 presentation provided by CBLAD at the Board Committee of the Whole Meeting (Attachment 4). A link to the December 1, 2008 packet is available on the Chesapeake Bay website at: www.loudoun.gov/chesapeakebay . Staff has	

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			maintained ongoing communication with several surrounding jurisdictions that are subject to the Bay Act in developing the draft amendments and responding to questions. No unforeseen consequences have been brought forth during these discussions. These localities have nearly 20 years of experience implementing the regulations and are likely to have resolved any similar circumstances in their local ordinances, which were consulted in the preparation of the draft amendments. Staff is working on a map of the 84 localities, as compared to the rest of the Virginia Bay watershed.	
133)	Provide a cost range for septic pump out. Commissioner Austin's pump-out was \$175 for a three-bedroom septic (pumped by Dranesville Septic Service).	Austin	The Health Department provided a cost estimate on February 16, 2010 of \$218 per pump-out with a price range of \$185 - \$250 (estimates from five companies). Loudoun Water recently raised their disposal fees from \$15 to \$35 per gallon so there may be some associated increases in pump-out costs.	
134)	Adequate staff support is essential to assisting farmers, businesses, and property owners in complying with the regulations. Promulgating regulations without adequate staff would be a disservice and lead to failed implementation. Can a staffing level requirement be included as a provision in the ordinance? What staff resources will be needed to implement the Bay Act? How does this translate into taxpayer dollars?	Environmental Stakeholders, Austin Syska	Staff agrees that adequate staff support is necessary for the implementation of the draft amendments. Staff envisions that the draft amendments can be implemented if existing staffing levels are maintained in key areas. Staff is unaware of enabling authority to support a provision related to staffing levels; however, staff is actively coordinating with County Administration regarding the County staffing levels necessary to support implementation of the draft amendments. Staff will confer with the County Attorney's Office on whether or not staffing level requirements can be included in the draft ordinance.	
135)	Can the limits of disturbance outlined in Section 1222.19 of the CBPO be expressed as a percentage of the parcel area instead of a static square footage?	Austin	Staff assumes that the question relates to the amount of expansion and impervious cover outlined in Section 1222.20. The limits of expansion and disturbance could be expressed as a percentage of the parcel area. Fairfax County expresses the limits based upon impervious area as "construction of additions to principal structures . . . which do not result in the creation of 1,000 square feet or more of additional impervious area within an RPA, or the creation of additional impervious area within an RPA that exceeds two (2) percent of the lot area up to a maximum limit of 2,500 square feet, whichever amount is greater," which is measured cumulatively following adoption. A 2.87-acre lot would reach the 2,500 square foot limit.	
136)	Request that Board Chairman York brief the Planning Commission on why the Board chose Option 1 from the briefings provided by staff and a copy of the associated documents. What alternatives are there to meeting the same objectives as the Bay Act without adopting it? Clarify the Board's direction to pursue the Bay Act? What exactly is an Intent to	Maio Syska	Chairman York is preparing a letter to be distributed to the Planning Commission that will provide a summary of the process that the Board of Supervisors used in deciding to proceed with Option 1 of the Chesapeake Bay Act, and the rationale for the decision. At the Commission's work session on February 16, 2010, County Attorney Jack Roberts provided a summary of the guidance that he provided to the Board of Supervisors during their decision making process.	

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	Amend? Explain why the Board decided on Option 1. What other options were available to the Board? As adoption is voluntary, who introduced the legislation here in Loudoun – a Board member, staff, special interest group? Is it staff’s directive to advocate and argue for adoption of the Bay Act, or must staff remain unbiased? What is the correct protocol?		It is the role of County Staff to follow the direction of the Board of Supervisors and to provide professional guidance and recommendations throughout the process.	
137)	Is there a threshold for the number of criteria that have to be adopted in order to be under the auspices of the Chesapeake Bay Act?	Maio	The enabling regulations outline 11 performance criteria from which a locality may select when voluntarily choosing to implement the Chesapeake Bay Act. There is no minimum number of criteria that have to be adopted to participate. The Board directed staff to pursue certain criteria as part of the approved Work Program. The enabling regulations require that localities designate Chesapeake Bay Preservation Areas, including RPAs and RMAs, which are subject to the performance criteria.	
138)	What would be a high and low cost estimate of giving a two-year moratorium on County fees to complete additions, rebuilds with extensions, etc?	Robinson	Staff has not established a fee schedule for implementation of the draft amendments. Fees will be provided to the Board for consideration in adopting the draft amendments.	
139)	Have all of the ordinances been reviewed to make sure that there are no conflicting terms and conditions?	Robinson	Staff notes that the definitions outlined in the CBPO apply only to that Chapter. Staff is unaware of any other inherent conflicts between ordinances.	
140)	Has the redundancy been removed to avoid a “pile-up” of rules?	Robinson	Staff is unaware of any inherent redundancy related to the draft amendments.	
141)	<p>Limitations should be placed on the use of fertilizers and manure in buffer areas (except for the initial establishment of vegetation) to achieve the stated pollutant removal rates.</p> <p>Is there an opportunity to put a \$2.00 tax on all fertilizers and herbicides with signage indicating that Loudoun taxes all fertilizers to support a cleaner Chesapeake Bay?</p> <p>Is there an opportunity to levy a fee on landscapers for all fertilizing based upon the number of acres fertilized, regardless of where it is purchased?</p>	Environmental Stakeholders, Robinson	<p>The suggested amendment is outside the scope of the enabling regulations. However, the Loudoun County Extension Office currently coordinates a voluntary program implemented by Master Gardener Volunteers that educates homeowners and assists them in implementing nutrient management plans. Members of the “Turf Team” visit the property, collect a soil sample, and assess the condition of the lawn. Extension staff develops a written nutrient management plan based upon the soil test results and fertilizers available locally. The nutrient management plan is valid for 3-4 years, at which time the soil should be re-tested. This program is currently being considered for expansion into the proposed Limestone Overlay District due to the potential for groundwater contamination.</p> <p>The enabling Regulations do not provide authority to tax or charge fees for fertilizers. Staff is unaware of any other enabling authority to implement a similar tax or fee.</p>	
142)	What fiscal benefits are derived from adopting the Bay Act. How to these fiscal benefits compare to investments being made in the process (e.g., personal financial investment, growth in government, etc.).	Syska	A cost/benefit analysis to address the question is beyond the scope of the project. However, it is acknowledged that the fiscal benefits associated with accomplishing the goal of improving and maintaining the quality of the County’s water resources is difficult to quantify, but nonetheless is considered a	

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			key component of ensuring a high quality of life for all of the County's residents and businesses.	
143)	Provide answers to the 17 major issues identified by Mike Rolband.	Syska	Staff responses to these issues were identified in the "Environmental" section of the December 3, 2009 Stakeholder Roundtable Comment Response Matrix provided as an attachment to the Public Hearing Staff Report. These issues have been included in this matrix.	
144)	Please contact Sterling Park Golf, Swim and Tennis Club and the Sterling Foundation in Sterling District to inform them that the Bay Act amendments are being vetted. There was a pre-application meeting related to construction of a new clubhouse. Also, can the Potomac/Sterling Outreach notify all constituents on that list of the Bay Act amendments similar to the outreach for parking on front lawns.	Syska	Staff seeks additional direction from the Planning Commission regarding the requested outreach efforts. Staff is concerned about providing outreach to only certain specified applicants and interest groups.	
145)	Evaluate Moorefield Station and One Loudoun for impacts if the Bay Act amendments are adopted (whether or not it might be grandfathered).	Bill May, Randy Sutliff, Syska	Staff is in the process of conducting the requested evaluation and will provide additional information at a future work session.	
146)	What impacts would there be on properties pursuing revitalization or redevelopment?	Syska	Redevelopment is permitted in the RPA as outlined in Section 1222.12.b of the CBPO if there is no increase in the amount of impervious cover, it is in the same physical location, there is no further encroachment into the RPA, and it conforms with erosion and sediment control and stormwater management requirements.	
147)	What kind of development can occur in the RMA?	Syska	Section 1222.13 of the CBPO outlines permitted uses in the RMA. Uses, development, and redevelopment otherwise permitted by the Zoning Ordinance and other law are allowed in the RMA provided that it complies with the Performance Criteria outlined in Section 1222.17.	
148)	What are the criteria for exceptions and how would they be handled?	Syska	Section 1222.23 of the CBPO outlines the RPA exception requirements and required findings. Exceptions are reviewed by a Board-appointed Chesapeake Bay Review Board in the current draft.	
D.	ENVIRONMENTAL			
149)	Reduce the drainage area maximum from 50 acres to 35 acres for a modified perennial flow determination in FSM 7.500.A.1.b.	Environmental Stakeholders	Staff supports the proposed recommendation and proposes to make this amendment prior to Planning Commission recommendation of the proposed amendments.	
150)	The interactive draft CBPA map should be provided before or by the time the Planning Commission Public Hearing drafts are published.	Environmental Stakeholders	The interactive draft CBPA layer was posted to WebLogis in conjunction with the advertisement of the Planning Commission Public Hearing drafts.	
151)	Increasing the level of flexibility in the proposed amendments introduces the potential for legal challenges. It is more defensible to adhere to the enabling regulations.	Environmental Stakeholders	Staff agrees with the need to maintain consistency with the state enabling regulations of the Chesapeake Bay Preservation Act in drafting the proposed amendments consistent with the Intent to Amend approved by the Board of Supervisors on December 15, 2009.	

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152)	Stream buffer ordinances have been instituted nationally with success and the Chesapeake Bay Preservation Act has been applied locally and regionally while allowing development and agriculture to continue.	Environmental Stakeholders	Staff agrees with this observation and recognizes the benefits of implementing an established program.	
153)	Education to business, agriculture, and property owners is important for the successful implementation of a local Chesapeake Bay Preservation Act program. The County should develop educational materials so that all Loudoun County residents understand how they are affected and what is and what is not permitted under the new regulations.	Environmental Stakeholders	Staff acknowledges the need for education and outreach regarding the amendments. To that end, a Chesapeake Bay Webpage (www.loudoun.gov/chesapeakebay), a Chesapeake Bay Hotline, and a Chesapeake Bay E-Mail Address have been established. Staff envisions that additional educational materials will be made available through the website as the effort continues.	
154)	<p>Only 22 percent of streams in Loudoun County achieve good or excellent ratings according to current water quality standards. Declining water quality will negatively affect property values. The proposed amendments will help to preserve property values.</p> <p>Provide the Planning Commission with copies of the "Loudoun County Stream Assessment: Results Report, September 25, 2009" mentioned during the Public Hearing.</p> <p>Review stream studies with the Planning Commission. What are current water quality test levels? What is causing high pollutant content? What reports are available to show the extent to which streams and rivers will stress at full build out of zoning that is currently taking place?</p>	Environmental Stakeholders Klancher Syska	<p>The 2009 Loudoun County Stream Assessment study included both benthic and stream habitat field investigations at 500 locations throughout the County. Statistically the benthic study performed at 177 of these locations indicated that 3.8% of the stream miles are in "Excellent" condition and that 18% are in "Good" condition. The remaining 78% of the stream segments do not meet the Virginia Dept of Environmental Quality (DEQ) Aquatic Life Use water quality criteria based on benthic macroinvertebrate monitoring. The Aquatic Life Use is one of six water quality standards that DEQ uses to classify stream segments as "impaired." DEQ adds stream segments that do not meet one or more of the water quality standards to the EPA 303(d)/305(b) listing as required by the Clean Water Act. As of the 2008 DEQ biennial list for Aquatic Life Use, there were 44.6 stream miles (6.1%) with benthic impairments, however, DEQ had not assessed or had insufficient monitoring information on 75% of the stream miles in Loudoun County. Further details may be found at www.loudoun.gov/streamassessment.</p> <p>It is generally accepted that water quality is one component of quality of life issues; therefore a decline in water quality could negatively affect property values.</p> <p>Staff provided the Planning Commission with a related brochure during the Public Hearing. The brochure ("Stream Assessment – Summary Brochure") and the full report ("Stream Assessment – Results") are available at www.loudoun.gov/streamassessment.</p> <p>Staff will be available at the upcoming work sessions to respond to additional questions.</p>	
155)	Provide a large format County Map identifying current stream conditions based upon the Countywide Stream Assessment for use during Planning Commission Work	Chaloux (12/3)	Staff has prepared the draft maps depicting the requested information, which can be made available for reference during Work Sessions.	

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	Sessions.		<p>A searchable map with the requested information is also available at: www.loudounwatershedwatch.org/maps/index.htm.</p> <p>Large-format stream assessment maps depicting benthic and habitat results may be viewed at: http://www.flickr.com/photos/omagi.</p>	
156)	<p>Has any study evaluated the FOD and Scenic Creek Valley Buffer in protecting the waters in the County?</p> <p>Concern of duplicate regulations in SCVB.</p>	Edna Cross, Christine Windle, Jeff Nein	The referenced ordinances are not primarily geared toward water quality protection and have not been evaluated in relation to achieving water quality protection goals. While the Scenic Creek Valley Buffer requires a setback from streams located in the Major Floodplain, the RPA is a management area designated along perennial streams. There may be cases where both ordinances apply; however, they have distinct objectives.	
157)	Is the CBPO necessary to protect surface and ground water and the Chesapeake Bay?	Edna Cross	The Comprehensive Watershed Management Plan (CWMP), completed in September 2008, compiled existing data to evaluate Loudoun's water quantity, quality, and watersheds on a number of criteria and categorized the County's 161 subwatersheds into three focus areas (improve, mitigate and prevent, and maintain). The CWMP also included approximately 90 watershed management recommendations, two of which relate to the implementation of the Chesapeake Bay Preservation Act and/or stream buffers. The CWMP report can be viewed online at: http://www.loudoun.gov/Default.aspx?tabid=2914 .	
158)	What has the effect of this ordinance been on the Chesapeake Bay now that it has been in effect for 20 years in the other required jurisdictions? Are there any available reports highlighting the benefits of the CBPA?	Klancher Syska	The Bay Act is only mandatory in 84 Virginia Tidewater localities (including 29 Counties, 17 Cities, and 38 Towns). It is not mandatory in the other 39 Virginia Counties that drain to the Bay. Thus, less than half of the Counties draining to the Bay, and less than half of the land area in Virginia draining to the Bay, is covered by the Bay Act provisions. While it is commonly understood that the Bay Act is Virginia's primary approach to protecting the Bay, the specific benefit of the current Bay Act has not been quantified. However, the benefits of this program will likely be quantified in establishing the pollutant load reductions required under the Chesapeake Bay TMDL (Total Maximum Daily Load), expected by December 2010. The Joint Legislative Audit and Review Commission published a report on Implementation of the Bay Act in 2003. The Executive Summary of this report was provided to the Board as an attachment to the February 17, 2009 Staff Report and is available online at www.loudoun.gov/chesapeakebay . The report provides relevant information about the history, implementation, administration, and potential expansion of the Bay Act regulations.	
159)	How will success of the program be measured? What if there is no measurable improvement? What other measures may be proposed?	Robinson	The regulations do not include a protocol for measuring success. Similar to erosion and sediment control and stormwater management requirements, the regulations were developed with specific goals for improving water quality. However, DEQ monitors local streams on an rotating annual basis at about 26 monitoring stations for water chemistry and 10 locations for benthic and habitat	

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			assessment. In addition, the County monitors groundwater quality at 7 monitoring locations. The Comprehensive Watershed Management Program establishes over 80 strategies for improving water quality. While the Chesapeake Bay regulations address several of the strategies outlined in the plan, additional tools will likely be proposed in the future to achieve water quality goals.	
160)	Provide a list of overlay districts, when they were put into place, and their goals and objectives. What studies have been done to conclude whether any of our overlay districts are in fact meeting their objectives?	Syska	<p>There are three (3) current Zoning Overlay Districts in the Revised 1993 Zoning Ordinance (Zoning Ordinance), in which the goals and objectives are related to avoiding environmental impacts. They are the Floodplain Overlay District (FOD); the Mountainside Development Overlay District (MDOD); and the Limestone Overlay District (LOD).</p> <p>A Flood Hazard District was first adopted by the County on January 12, 1981 under the 1972 Zoning Ordinance. It was substantially revised and restructured as the Floodplain Overlay District on June 20, 1988 and was further amended with the adoption of the 1993 Zoning Ordinance on June 16, 1993. The Purpose and Intent of the FOD is stated in the Zoning Ordinance is as follows: “These provisions are created to regulate and restrict land use in areas within the County which are subject to severe periodic inundation by waters of the one hundred year flood, in such a manner as to: (1) protect life and prevent or minimize property damage; (2) reduce public costs for flood control, rescue and relief efforts occasioned by unwise use or occupancy of such areas; (3) conserve the natural state of watercourses and watersheds, and minimize the damaging effects which development has on drainage conditions, pollution of streams, and other environmental impacts on the County's water sources; (4) comply with Federal and State laws and regulations that address the need for floodplain management and protection; and (5) qualify Loudoun residents for the insurance and subsidies provided by the National Flood Insurance Program.</p> <p>The Mountainside Development Overlay District (MDOD) was first adopted on December 21, 1987 under the 1972 Zoning Ordinance. The MDOD was substantially revised with the adoption of the 1993 Zoning Ordinance on June 16, 1993. The Purpose and Intent of the MDOD is stated in the Zoning Ordinance as follows: “These provisions are created to regulate land use and development on the mountainsides of the County, in such a manner as to provide for low density residential development in remote areas and to: (1) assure mountainside development will not result in substantial damage to significant natural resource areas, wildlife habitats, or native vegetation areas; (2) assure that mountainside development is compatible with the slope of the land; (3) assure proper design is utilized in grading and in the development of</p>	

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			<p>structures, roadways and drainage improvements; (4) assure mountainside conditions are properly identified and incorporated into the planning process for subdivision and site development; (5) prevent erosion and minimize clearing and grading; (6) ensure that all development is compatible with the existing topography and soils conditions; and (7) implement the intent of the Comprehensive Plan..</p> <p>The Limestone Overlay District (LOD) was adopted on February 17, 2010. The Purpose and Intent of the LOD is stated in the Zoning Ordinance as follows: "...the provisions...are intended to regulate land use and development in areas underlain by limestone and in areas with Karst features and Karst terrain in such a manner as to: (A) Protect the health, safety and welfare of the public; (B) Protect groundwater and surface water resources from contamination; and (C) Reduce potential for property damage resulting from subsidence or other earth movement.</p> <p>The implementation of these overlay districts is addressed during the land development process. There are no monitoring requirements associated with these overlay districts. They are land-use/management standards designed to avoid environmental impacts. Nearly every Loudoun subwatershed contains an impaired stream segment and TMDLs are routinely prepared, which identify pollutant loads that a stream can tolerate while still maintaining water quality standards.</p>	
161)	Request an official recommendation from the Goose Creek Scenic Advisory Board (Mark Peters, Chair).	Syska	Staff seeks guidance from the full Commission on whether to request an official recommendation from the Goose Creek Scenic Advisory Board. This group did not have representation on the list of Stakeholders approved by the Board of Supervisors and were not sent a formal referral request regarding the proposed amendments.	
162)	By law, what type of projects require environmental impact statements? If a Federal report is required, does the State accept it or require its own report? How would the Bay Act fit into any required environmental impact statement reviews?	Syska	The National Environmental Policy Act (NEPA), 42 USC, §§ 4321-4347, is best known for its requirement that an Environmental Impact Statement (EIS) be prepared for all major federal actions significantly affecting the quality of the human environment. It establishes a continuing responsibility on the federal government to ensure that environmental concerns are disclosed and considered to the fullest extent possible. At the heart of this directive are specific procedural requirements designed to ensure that federal agency officials consider environmental issues in their decision-making process. The primary device to implement this requirement is the Environmental Impact Statement. However, NEPA provides only procedural protection against federal agency actions. NEPA applies to all major actions (federally sponsored, funded, or licensed projects) that significantly affect the quality of the human environment.	

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			<p>While NEPA is used primarily to regulate federal agency actions affecting the natural environment, it also applies to historic and cultural resources. Environmental reviews must include consideration of impacts on urban quality, historic and cultural resources, and the design of the built environment, along with alternatives to avoid these impacts.</p> <p>Virginia Code §10.1-1188 requires state agencies to prepare and submit an Environmental Impact Report (EIR) for each major state project. A major state project is defined as the acquisition of an interest in land for construction of any state facility, the construction of any state facility or the expansion of an existing facility costing \$500,000 or more. The purpose of environmental review is to identify and evaluate the environmental effects of proposed state facilities, and to guide facility siting and design decisions in order to protect important environmental resources. EIRs must identify and describe the resources present on sites of interest, and should evaluate how their use of the site may affect the resources, including a site plan or map showing the limits of Resource Protection Areas and/or Resource Management Areas and the proximity of these features to any proposed structures or planned land disturbance on the project site. Where a project is subject to both state and federal requirements, the Department of Environmental Quality (DEQ) will accept a suitable federal document as the state EIR.</p>	
163)	Is it correct that President Obama set deadlines for the Bay Act?	Syska	<p>President Obama issued an Executive Order on May 12, 2009 requiring federal agencies to publish a strategy for protecting and restoring the Chesapeake Bay within a year of the order. The strategies outlined in the Executive Order are independent of the State Bay Act legislation and the Chesapeake Bay TMDL. Additional information on the strategy is available at: http://executiveorder.chesapeakebay.net/.</p>	
164)	The Thames River is now experiencing some degradation after being called the “cleanest metropolitan estuary in the world.” Purportedly it supports over 120 species of fish. What did London do, what technologies did it put into place, to get the river to its pristine condition? Over what period of time? What is now causing environmental degradation?	Syska	<p>Staff seeks additional direction from the Planning Commission regarding the requested research effort given the scope of the project and the proposed timeline.</p>	
165)	How would a point to nonpoint pollutant trading credit program work?	Syska	<p>Generally speaking, a trading program would allow pollutant requirements for point source pollutant discharges (e.g., sewage treatment plant discharges) to be achieved by obtaining pollutant reduction credits from nonpoint sources (e.g., urban and agricultural BMPs). The enabling regulations do not include a pollutant trading option.</p>	

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E.	COMPREHENSIVE PLAN POLICIES			
166)	Delete “proximate to the impacted resource” in Policy 14 in Chapter 5, Section A of the Revised General Plan due to the fact that the stated locational preference for mitigation on site is out of date and contradicts with federal regulations and state guidance that establish the order of mitigation preferences as noted above.	Environmental Stakeholders	Policy 14 has been amended as suggested.	
167)	Take out the phrase “in the County” in Chapter 5, Section A, Item 15 of the Revised General Plan.	Mike Rolband	Staff disagrees with the suggested amendment. Federal and state mitigation requirements allow mitigation for stream and wetland impacts in Loudoun to be exported to surrounding jurisdictions based on subbasin level boundaries; however, stream impairments and associated TMDLs are designated at much smaller subwatershed boundaries, which are primarily contained within Loudoun. Stream and wetland impacts not mitigated in the County impair the County’s ability to achieve other federal and state water quality mandates.	
168)	Delete the second and third sentences of Policy 5 in Chapter 4, Section B of the 2001 Countywide Transportation Plan (“Natural stream channels will be maintained beneath road crossings to minimize impacts to stream flows and habitat. Unavoidable filling of jurisdictional waters and wetlands will be mitigated according to the following priorities: 1) adjacent to the road crossing; 2) within the same stream watershed and Policy Area; 3) within the same stream watershed within Loudoun County; or 4) elsewhere within Loudoun County.”) The policy is considered to be an impediment to local progress in attracting mitigation projects. The change is proposed for the following reasons: 1) It is often not practicable to maintain natural streams beneath road crossings due to cost, logistics, scour, and the fact that natural streams rely upon stream-side vegetation for stability; 2) the locational preferences for mitigation are out of date and contradict with federal regulations and state guidance that establish the order of mitigation preferences as i) Mitigation Bank Credits, ii) in-lieu fee contributions, iii) permittee responsible mitigation on-site, and iv) permittee responsible mitigation off-site; 3) Virginia Code Section 62.1-4415.20.E states “No locality may impose wetland permit requirements duplicating State or Federal Wetlands Permit requirements.”	Environmental Stakeholders	Staff disagrees that the proposed policy would be an impediment to attracting local mitigation projects in that similar proffer commitments have been negotiated over the past several years and the County has continued to experience significant growth in the number of local mitigation bank projects. Furthermore, although the policy was initially included to be consistent with the draft Countywide Transportation Plan, it has been removed from the draft Chesapeake Bay Comprehensive Plan Amendment due to the fact that it is not directly connected to the implementation of the proposed regulations. Additionally, the U.S. Army Corps of Engineers and the Virginia Department of Environmental Quality are responsible for issuing wetland permits. The County does not have and is not proposing local wetland permitting requirements.	
169)	Concern that changes to the Revised General Plan are more extensive than what was proposed by the Board with Option	Lou Canonico	Staff has responded to the more detailed list of questions raised by Mr. Canonico later in this matrix. The more detailed list of issues were generally	

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	#1. Concern that there will be confusion between the Revised General Plan and the CBPO in terms of how the policies are implemented. Presented a list of detailed issues to the Secretary.		combined with the NVBIA/NAIOP comments, due to their similarities.	
170)	Consider a policy amendment in the Suburban Policy Area to allow 75 percent of the recommended open space to be satisfied by the floodplain RPA areas.	Jeff Nein	In the Suburban Policy Area, residential developments must have 30% of the land designated as open space. The <u>Revised General Plan</u> envisions three basic types of open space: active recreation, passive recreation, and natural. The RSCOD area is not to comprise more than 50% of the open space in a residential community. Because of the greater concentration of residents, open space areas, especially active and passive recreation, play a critical role in defining the quality of life in the Suburban Policy Area. As the RGP states, "Open space not only lends scenic beauty, it also provides space for recreational activity." Increasing the amount of open space satisfied by floodplains and the RPA would likely reduce the area designated for recreational uses in a community. Consideration of such a change to the complexion of open space areas within Suburban residential communities is beyond the scope of the Bay Act CPAM.	
171)	Throughout The General Plan; Many of the proposed changes in the General Plan far exceed those necessary to enact the Chesapeake Bay Ordinance and the spirit of the direction of the Board of Supervisors. The Built Environment Policies and the River and Stream Corridor Policies have been added to, far exceeding the inclusion of the Chesapeake Bay Ordinances. The County should not be taking this opportunity to rewrite their Built Environment and River and Stream Corridor Policies by adding to policies or creating new policies that are in addition to the Chesapeake Bay requirements. Built Environment Policy 2: This statement over reaches the implementation of the Chesapeake Bay Regulations.	NVBIA/NAIOP, Lou Canonico	In their Resolution of Intent to Amend, the Board stated "its intent to amend the Comprehensive Plan, including, without limitation, both the Revised General Plan and the Countywide Transportation Plan, in order to establish new, and revise existing, policies in regards to the protection of the natural environment in Loudoun County and the quality of state waters." The amendments are in keeping with the Board direction and federal policy guidance including the CBPA, the Virginia Administrative Code, the Chesapeake 2000 Agreement, and Executive Order (EO) 13508 (Chesapeake Bay Protection and Restoration).	
172)	RGP River and Stream Corridor Policies – Paragraph A (page 11); The definition of River and Stream Corridor has been expanded to include any river or stream, without regard to the size of its drainage area. This definition of River and Stream Corridor is too broad, and should remain defined as those draining 100 acres or more.	NVBIA/NAIOP	The previous definition was based on the RSCOD, which relied upon drainage areas. Chesapeake Bay regulations rely upon perennality. Subsequent policies have been revised to reflect the proposed regulatory approach. Using drainage areas would result in inconsistencies between the policies and the proposed regulations. Additionally, the intent of the cited text is to broadly identify water resources in the County river and stream corridors. It is not the intent of the paragraph to define a regulatory approach for each resource.	
173)	RGP River and Stream Corridor Policies – Paragraph A	NVBIA/NAIOP,	Although not part of the RPA and not ultimately regulated in the same manner,	

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	<p>(page 11); The River and Stream Corridor is defined in this paragraph to include only those environmental features "associated" with a river or stream, yet later in the River and Stream Corridor policies, environmental features that are <u>not</u> associated with a river or stream are regulated (eg; isolated wetlands). Isolated wetlands should not be included in the River and Stream Corridor policies.</p> <p>The staff has inserted both “wetlands” and “steep slopes” into the lead paragraph. This is contrary to the Board direction. The Board considered setbacks from environmental features and rejected these options.</p> <p>River and Stream Corridor Policy 2: Only connected wetlands should be included. Other wetlands are not part of the River and Stream Corridors and should be addressed elsewhere in the plan.</p>	Lou Canonico	<p>isolated wetlands are water resources that are addressed by County policies. Many of these features exist in floodplains and were part of the RSCOD. With the elimination of the RSCOD construct, it was necessary to specify the individual components of the river and stream corridors and define a regulatory approach for each, including floodplains and wetlands, both connected and isolated. The County's policies and regulatory approach for isolated wetlands has not changed - they are still regulated by the Army Corps of Engineers and the State. The proposed policies continue to recognize wetlands as a water resource and clarify the County's regulatory approach to them.</p> <p>Additionally, staff notes that the 50-foot Management Buffer surrounding floodplains and adjacent steep slopes was eliminated from the existing policies.</p>	
174)	<p>RGP River and Stream Corridor Policies – throughout, and also item 2(f) (page 12); "Steep Slopes" is defined as slopes greater than 25%. In the Zoning Ordinance these slopes are defined as "Very Steep Slopes." We recommend that throughout the General Plan "Steep Slopes" be referred to as "Very Steep Slopes" so as to ensure that only those with a 25% or greater slope are affected.</p> <p>The reference to “steep slopes” should be removed from this section of the plan or it should be clarified that as used in this section, it applies to “steep slopes” located within the RPA.</p>	NVBIA/NAIOP, Lou Canonico	<p>The <u>Revised General Plan</u> refers to Moderately Steep Slopes as slopes of 15 to 25 percent grade and steep slopes as slopes of greater than 25 percent grade. While staff recognizes that these terms are inconsistent with the Zoning Ordinance, the policy and regulatory approach for each type of slope is consistent. Additionally, staff felt that changing the definition of steep slopes was outside the scope of the CBPA. Due to the consistency between policies and regulations and the lack of direction regarding steep slopes, staff did not propose any changes to steep slope terminology.</p> <p>Like forest, archaeological, cultural, and historic resources, steep slopes are resources that are recognized to occur in River and Stream Corridors as part of current policies. Previously, they were addressed through the RSCOD. With the elimination of references to RSCOD, further information was necessary to specify the County's approach to Steep Slopes in River and Stream Corridors.</p>	
175)	<p>RGP River and Stream Corridor Policies – throughout, and also item 6 (page 13); "Steep Slopes" have been added as a protected resource within River and Stream Corridors, but are not part of the Chesapeake Bay Preservation Act. The addition of Steep Slopes to this policy is outside the scope of the Intent to Amend and should be deleted.</p>	NVBIA/NAIOP, Lou Canonico	<p>Like forest, archaeological, cultural, and historic resources, steep slopes are resources that are recognized to occur in River and Stream Corridors as part of current policies. Previously, they were addressed through the RSCOD. With the elimination of references to RSCOD, further information was necessary to specify the County's approach to Steep slopes in River and Stream Corridors.</p>	

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176)	RGP River and Stream Corridor Policies – item 8 (page 13); This new policy is vague and difficult to interpret. Please clarify.	NVBIA/NAIOP	Federal guidance specifies watersheds as the major organizing element of the Chesapeake Bay water quality protection and restoration. The Chesapeake 2000 Agreement supports the implementation of local watershed management plans. These plans are intended to address the protection, conservation, and restoration of stream corridors, riparian forest buffers, and wetlands for the purposes of improving habitat and water quality, with collateral benefits for optimizing stream flow and water supply. EO 13508 supports the construction of watershed-based frameworks that assign pollution reduction responsibilities to pollution sources and the maximization of the reliability and cost-effectiveness of these pollution-reduction programs. The policy is also consistent with the EPA's use of watersheds as the basis for water resources planning and management. As defined by the EPA, a watershed approach is "a flexible framework for managing water resource quality and quantity within a specified drainage area or watershed. This approach includes stakeholder involvement and management actions supported by sound science and appropriate technology."	
177)	RGP River and Stream Corridor Policies – item 13 (page 14); The proposed language creates a policy of encouraging regulation of intermittent streams, wetlands connected to intermittent streams, and isolated wetlands - none of which are within the scope of the Chesapeake Bay Preservation Act. These items outside the scope of the Chesapeake Bay Preservation Act should be removed, as they exceed the adopted Intent to Amend.	NVBIA/NAIOP, Lou Canonico	Although not always contained within the RPA and not ultimately regulated in the same manner, these features are water resources within river and stream corridors that are addressed by current County policies. Many of these features are within floodplains and were part of the RSCOD. With the elimination of the RSCOD construct, it was necessary to specify the individual components of the river and stream corridors and clarify the regulatory approach for each. The County's policies and regulatory approach for intermittent streams and isolated wetlands has not changed - these resources are still regulated by the Army Corps of Engineers and the State.	
178)	RGP River and Stream Corridor Policies – item 14 (page 14); The proposed language creates a policy of regulating intermittent streams, which is outside the scope of the Chesapeake Bay Preservation Act. Delete "jurisdictional waters" and "intermittent streams" as areas to be regulated by the County, as they exceed the adopted Intent to Amend.	NVBIA/NAIOP, Lou Canonico	Although not always contained within the RPA and not ultimately regulated in the same manner, these features are water resources within river and stream corridors that are addressed by current County policies. Many of these features are within floodplains and were part of the RSCOD. With the elimination of the RSCOD construct, it was necessary to specify the individual components of the river and stream corridors and clarify the regulatory approach for each. The County's policies and regulatory approach for jurisdictional waters and intermittent streams has not changed - these resources are still regulated by the Army Corps of Engineers and the State.	
179)	RGP Surface and Ground Water Resources - page 18 (General Paragraph and also Policy Number 1), and page 21, Policy 1; It is unclear the intended scope of the County's policy to encourage "comprehensive assessment and long-term	NVBIA/NAIOP	The proposed policy currently reads: "The County supports a watershed-based approach to the protection of surface water resources, including the comprehensive assessment and long-term monitoring of water resources, implementation measures, and education and outreach."	

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	<p>monitoring of water resources, ..."</p> <p>It should be clarified whether it is the intent that these long-term studies be requested of the private sector and, if so, under what conditions.</p>		<p>The policy is drawn primarily from the Chesapeake 2000 Agreement and Executive Order 13508. It is intended that the County will bear the primary responsibility for these efforts. The proposed policy is also consistent with the strategies of the County's Comprehensive Watershed Management Plan (CWMP). Several efforts cited in the CWMP are on-going, including volunteer stream monitoring, which is a cost-effective and significant component of a monitoring program.</p> <p>Staff recommends the following addition to clarify the intent of the policy:</p> <p>"The County will be responsible for the compilation and interpretation of water quality data and assessments from all sources, including federal agencies, State agencies, and local volunteer organizations."</p>	
180)	<p>RGP Plant and Wildlife Habitats Policies – item 8 (page 28); Removal of invasive vegetation exceeds the scope of the Chesapeake Bay Preservation Act and Intent to Amend. The removal of invasive vegetation is an unreasonable expectation and should not be stated as a County policy. The first sentence of this policy should be modified and the second sentence should be removed.</p>	NVBIA/NAIOP	<p>The protection of healthy habitats and the restoration of degraded ones is a major tenet of the Chesapeake Bay program with specific direction regarding indigenous species. Indigenous species are flora and fauna that share an evolutionary history in a local area. Each has a function in the ecosystem and increases redundancy, stability, and productivity. Conversely, invasive species are animals and plants that are not native to the local area and have the potential to negatively affect the ecosystem. Because they do not share an evolutionary history in an area, they generally contribute to a sterile environment. According to the Chesapeake Bay Program (CBP), invasive species rank second, after habitat destruction, as a threat or stressor in the Bay watershed. There are over 200 invasive species known to the Bay watershed and some are known to cause serious ecological problems and pose serious threats to living resources in the watershed. Water-based invasives include phragmites and purple loosestrife. Upland exotic invasive plant species include garlic mustard, tree of heaven, and Japanese honeysuckle, which can adversely impact riparian soil stability leading to increased sediment delivery to streams throughout the watershed. Overall, invasive vegetation has the potential to negate the water quality, habitat, and aesthetic benefits associated with indigenous vegetation and habitat restoration. Unless removed and managed properly, invasive vegetation can quickly overwhelm any remaining or planted indigenous vegetation. Also, it is most effective to eliminate invasive vegetation in conjunction with development or redevelopment. Waiting until after project development to remove invasive vegetation may be more costly, disruptive, impractical, and impossible to enforce.</p>	
181)	<p>RGP Open Space Policies – items 6, 7, 8, and 9 (page 45 & 46); These policies are in conflict with the Zoning Ordinance. These policies should be modified to match the Zoning Ordinance.</p>	NVBIA/NAIOP	<p>These policies were edited for consistency with the proposed CBPA and no substantive changes to the policies were made.</p>	

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182)	CTP Water Quality Policies – item 5 (page 7); This policy creates an unreasonable expectation and an unattainable goal that road projects can be constructed to further minimize land disturbance, or minimize impervious cover, or restore indigenous vegetation, more than they already are as constructed. In addition, it is impossible to expect the road construction process can prevent the reemergence of noxious or invasive plants. This policy should be removed because it is impossible to attain.	NVBIA/NAIOP	The basis for the proposed policy is the Code of Virginia, the Virginia Administrative Code, the Chesapeake 2000 Agreement, and EO 13508. The documents recognize that the construction of roads and the resultant increase in impervious cover may result in a degradation of waterways due to sediment and other non-point pollution. The draft policy is intended to encourage the minimization of land disturbance, the protection of waterways during construction, designs that preclude unnecessary impervious cover, the restoration of vegetation to an area following construction, and the removal of invasive vegetation during construction.	
183)	How would the Bay Act amendments affect the Countywide Transportation Plan (CTP) policies and standards?	Syska	Amendments to the CTP have been proposed consistent with the draft Ordinance.	